TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1921

No. [redacted]108

WILLARD N. JONES, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES OF AMERICA.

ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

FILED JULY 12, 1922.

(27,901)

(27,801)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 444.

WILLARD N. JONES, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES OF AMERICA.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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No._____

United States Circuit Court of Appeals

For the Ninth Circuit

WILLARD N. JONES,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

TRANSCRIPT OF RECORD

VOL. 1

(Pages 1 to 544, inclusive)

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In the District Court of the United States for the District of Oregon.

WILLARD N. JONES,
Plaintiff in Error

vs.

UNITED STATES OF AMERICA
Defendant in Error

NAMES AND ADDRESSES OF THE ATTORNEYS OF RECORD:

Mr. Bert E. Haney, United States Attorney, and Mr. Barnett H. Goldstein, Assistant United States Attorney, Postoffice Building, Portland, Oregon, for the Defendant in Error.

Mr. John H. Hall, Wilcox Building, Portland, Oregon, and Mr. Jay Bowerman, Yeon Building, Portland, Oregon, for the Plaintiff in Error.

PETITION FOR WRIT OF ERROR.

In the District Court of the United States for the District of Oregon.

WILLARD N. JONES

Complainant

vs.

UNITED STATES OF AMERICA

Defendant

Comes now the defendant above named, by John H. Hall and Jay C. Bowerman, his attorneys, and says that on the 12th day of December, 1918, the above entitled court entered judgment herein in favor of complainant and against defendant, in which judgment and proceedings had prior thereto upon the trial of this cause, certain errors were committed to the prejudice of this defendant, all of which will more in detail appear from the assignment of errors which this defendant files with this petition.

WHEREFORE, this defendant prays that a writ of error may be issued in his behalf, out of the United States Circuit Court of Appeals, for the Ninth Circuit, for the correction of errors so complained of, and that a transcript of record, proceedings and papers in this cause, duly authenticated, be sent to such Circuit Court of Appeals for said Circuit.

JAY BOWERMAN,
JOHN H. HALL,
Attorneys for Defendant.

ORDER ALLOWING WRIT OF ERROR.

In the District Court of the United States for the District of Oregon.

WILLARD N. JONES

Complainant

vs.

UNITED STATES OF AMERICA

Defendant

On this 25th day of March, 1919, the above named defendant, appearing by John H. Hall, of his attorneys, and filing herein and presenting to the court his petition praying for an allowance of a writ of error and assignment of errors intended to be urged by him, and praying also that a transcript of the record and proceedings and papers on which the judgment herein was rendered, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such other proceedings may be had as may be proper in the premises;

Now, on consideration thereof, the court does allow the writ of error as prayed in the petition of defendant, upon his executing a bond with good and sufficient sureties, to the United States, in the sum of $1,000, to be approved by this court.

C. E. WOLVERTON,
Judge of the District Court.

CITATION ON WRIT OF ERROR.

United States of America,
District of Oregon—ss.

To United States of America, Plaintiff, and Bert E. Haney, United States District Attorney, and Barnett H. Goldstein, Assistant United States Attorney, Attorneys for Plaintiff.

Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Oregon, wherein the United States of America is defendant in error and Willard N. Jones is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 25th day of March, in the year of our Lord, one thousand, nine hundred and nineteen.

.....

Judge.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH DISTRICT.

WRIT OF ERROR.

WILLARD N. JONES,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

The United States of America—ss.

The President of the United States of America. To the Judge of the District Court of the United States for the District of Oregon:

Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the District Court before the Honorable Charles E. Wolverton one of you, between the United States of America, Plaintiff and Defendant in Error, and Willard N. Jones, Defendant and Plaintiff in Error, a manifest error hath happened to the great damage of the said Plaintiff in Error, as by complaint doth appear; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit

Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

Witness the Honorable Edward Douglas White, Chief Justice of the Supreme Court of the United States, this 24th day of March, 1919.

(Seal)

G. H. MARSH,
Clerk of the District Court of the United States for the District of Oregon.

By ——— Deputy.

In the District Court of the United States for the District of Oregon.

March Term, 1912.

BE IT REMEMBERED, That on the 11th day of June, 1912, there was duly filed in the District Court of the United States for the District of Oregon, a Complaint, in words and figures as follows, to-wit:

COMPLAINT.

In the District Court of the United States for the District of Oregon.

United States of America,

Complainant,

vs.

Willard N. Jones,

Defendant.

Comes now the United States of America by John McCourt, United States Attorney in and for the District of Oregon, pursuant to the direction and authority of the Attorney General of the United States, and complains of the defendant Williard N. Jones, and alleges as follows:

I.

That the lands hereinafter described, together with a large area of other lands, were prior to the 16th day of May, 1895, a part of and included within the limits and boundaries of the Siletz Indian Reservation in the State of Oregon; that theretofore, on or about the 31st day of October, 1892, certain articles of cession and agreement were made and concluded at the Siletz Agency in the State of Oregon, by and between the United States of America and the Alsea and other Indians in the said Siletz Reservation, whereby said Alsea and other Indians, for the consideration therein mentioned, ceded and conveyed to the United States of America, all their claim, right, title and interest in and to all the unallotted lands within the limits of

said reservation, except five sections of land described in Article IV of said agreement, none of which lands so excepted are or were included within the lands hereinafter described. The lands hereinafter described were among the unallotted lands above mentioned and among the lands opened to settlement and entry as hereinafter alleged.

II.

That thereafter on the 15th day of August, 1894, the Congress of the United States duly and regularly passed an act entitled,

> "An Act making appropriations for current and contingent expenses of the Indian Department in fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1895, and for other expenses."
>
> 28 Stats. L. 286-326.

That in and by said last mentioned Act of Congress, said articles of cession and agreement between the Alsea and other Indians in said Siletz Reservation and the United States, hereinabove mentioned, was accepted, ratified and confirmed and provision was made for disposition of said ceded lands by the United States as follows:

> "The mineral lands shall be disposed of under the laws applicable thereto, and the balance of the land so ceded shall be disposed of until further provided by law, under the townsite law and under the provisions of the home-

stead law; provided, however, that each settler under and in accordance with the provisions of said homestead laws shall, at the time of making his original entry, pay the sum of fifty cents per acre in addition to the fees now required by law, and at the time of making final proof shall pay the further sum of one dollar per acre, final proof to be made within five years from the date of entry, and three years' actual residence on the land shall be established by such evidence as is now required in homestead proofs as a prerequisite to title or patent."

It was further provided, in and by said act that immediately after the passage thereof, the Secretary of the Interior should, under such regulations as he might prescribe, open said lands to settlement, after proclamation by the President and sixty days' notice; that thereafter on the 16th day of May, 1895, the President of the United States by proclamation, duly and regularly given and made, opened said ceded lands to settlement, on and after the 25th day of July, 1895, under the terms of and subject to all the conditions, limitations, reservations and restrictions contained in said agreement, the statute hereinbefore mentioned and referred to and the laws of the United States applicable thereto.

III.

That thereafter on the 17th day of May, 1900,

the Congress of the United States, duly and regularly passed and adopted an act entitled,

"An Act providing for free homesteads on the public lands by actual bona fide settlers, and reserving the public lands for that purpose,"

in and by which said act it was provided that all settlers, under the homestead laws of the United States upon the public lands which have already been opened to settlement, acquired prior to the passage of said act by authority or agreement from the various Indian tribes, who have resided or who shall hereafter reside upon the tract entered in good faith, for the period required by the existing law, shall be entitled to a patent for the land so entered, upon the payment to the local land officers of the usual and customary fees and no other or further charge of any kind whatsoever shall be required from such settler to entitle him to a patent to the lands covered by his entry.

IV.

That on or about August, 1900, the defendant, Willard N. Jones, with a view to and the intention of acquiring title in himself and persons associated and interested with him, to the lands hereinafter described, together with a large quantity of other lands ceded and opened to settlement under the homestead laws as hereinbefore set forth, caused a large tract thereof, including the lands hereinafter described, to be cruised for the purpose of ascertaining the quantity of timber standing there-

on, all of said lands being then and there heavily timbered and very valuable for the timber thereon.

V.

That on and between the 15th day of August, 1900, and the 25th day of February, 1901, the said defendant, Willard N. Jones, designing and intending to deceive the officers of the United States having authority relating to and over the public lands of the United States, and to defraud and cheat complainant out of the title, use and possession of a large portion of its unappropriated public lands open to settlement and entry under the homestead laws as aforesaid, by means of soliciting and procuring persons qualified to make homestead entries of said lands, to make false and fraudulent and collusive homestead entries upon portions of said ceded land then unappropriated, did on and between the above mentioned dates, solicit and procure the hereinafter named persons, together with a large number of other persons to make in the manner and form prescribed by law, homestead applications and affidavits at the United States Land Office therein at Oregon City, Oregon, but now at Portland, Oregon, for the lands hereinafter specifically described, together with others of said lands.

VI.

That the persons, among others wrongfully and unlawfully solicited and procured by the defendant, Willard N. Jones, to make homestead applications,

affidavits and entries as aforesaid, together with the date of the affidavit and application of each to enter the same, the number of the said application and the description of the lands entered and applied for, are as follows:

BENJAMIN S. HUNTER,

Date of Affidavit and Application, October 9, 1900,

Homestead Application No. 13135,

South Half of Northwest Quarter, Southwest Quarter of Northeast Quarter, and Northwest Quarter of Southwest Quarter of Section 13, Township 9 South, Range 10 West, Willamette Meridian.

OLIVER I. CONNOR,

Date of Affidavit and Application, October 6, 1900,

Homestead Application No. 13116, for

Southeast Quarter of Northeast Quarter and Northeast Quarter of Southeast Quarter, Section 4, and Southwest Quarter of Northwest Quarter and Lot 4, Section 3, Township 9 South, Range 10 West, Willamette Meridian.

WILLIAM TEGHTMEIER,

Date of Affidavit and Application, February 25, 1901,

Homestead Application No. 13396, for

South Half of Northeast Quarter and North Half of Southeast Quarter of Section 10, Township 9 South, Range 10, West Willamette Meridian.

RICHARD D. DEPUE,

Date of Affidavit and Application, October 5, 1900,

Homestead Application No. 13113, for

North Half of Southwest Quarter, Southeast Quarter of Southwest Quarter and Southwest Quarter of Southeast Quarter of Section 3, Township 9 South, Range 10 West, Willamette Meridian.

JOSEPH GILLIS,

Date of Affidavit and Application, October 1, 1900.

Homestead Application No. 13088, for

Lots 1, 2, 3 and 4, Section 4, Township 9 South, Range 10 West, Willamette Meridian.

THOMAS JOHNSON,

Date of Affidavit and Application, October 1, 1900.

Homestead application No. 13089, for

West Half of Southwest Quarter, Southeast Quarter of Southwest Quarter of Section 14, and Northeast Quarter of Northwest Quarter of Section 23, Township 9 South, Range 10 West, Willamette Meridian.

JOHN L. WELLS,

Date of Affidavit and Application, October 1, 1900.

Homestead Application No. 13090, for

South Half of Southeast Quarter, and Lots 1 and 2 of Section 10, and Northeast Quarter of

Northeast Quarter of Section 15, Township 9 South, Range 10 West, Willamette Meridian.

EDWARD C. BRIGHAM,

Date of Affidavit and Application, October 9, 1900.

Homestead Application No. 13137, for

Southeast Quarter of Southeast Quarter of Section 14, and South Half of Southwest Quarter and Northeast Quarter of Southwest Quarter of Section 13, Township 9 South, Range 10 West, Willamette Meridian.

ANTHONY GANNON,

Date of Affidavit and Application, October 1, 1900,

Homestead Application No. 13087, for

East Half of West Half of Section 11, Township 9 South, Range 10 West, Willamette Meridian.

VII.

That all of said lands hereinbefore described and entered and applied for as aforesaid at the United States Land Office at Oregon City, Oregon, were at the time of said applications and entries, vacant, unappropriated, non-mineral, public lands of the United States, subject to homestead entry as hereinbefore set forth, and at the time the said defendant, Willard N. Jones, solicited and procured the said above named persons and each of them to apply for and enter said lands, and before the filing of said applications and entires respectively,

under the homestead law, he prevailed upon and induced each of said entrymen to subscribe or assent to a written document or instrument substantially in words and figures as follows:

"That whereas, the party of the first part is entitled to the benefits of the Act of Congress of June 8th, 1872, (Sec. 2304 R. S.) giving homesteads to honorably discharged soldies and sailors, and desires to avail himself of the privileges therein granted by taking a homestead, and the party of the second part is in possession of information relative to the existence of public lands within the State of Oregon subject to entry;

Now, therefore, the party of the second part, in consideration of the covenants and agreements on the part of the party of the first part hereinafter stipulated to be kept and perfomed, hereby agrees to give to the party of the first part, information which will enable him to locate and file a homestead upon 160 acres of the public lands of the United States, situated within the State of Oregon, and the party of the first part hereby agrees to pay to the party of the second part as compensation for such services and information, and for his services to be performed in the preparation of the papers and affidavits necessary in making such filing the sum of $185.00,

to be paid in the manner and at the time hereinafter designated.

The party of the first part further agrees to comply with the laws of the United States in regard to residence upon said lands taken as a homestead, and agrees to employ and does hereby employ the party of the second part to build a house upon the land to be taken as a homestead, and grees to pay to the said party of the second part therefor, the sum of $100.00 to be paid in the manner and at the time hereinafter designated, and also to clear and cultivate the land to be taken up under this agreement, or so much thereof as is required and for the time required by the laws of the United States in order to perfect title thereto, and to pay the said party of the second part therefor the sum of $175.00, to be paid at the time and in the manner hereinafter designated. The said party of the second part hereby accepts such employment, and agrees to do and perform or to cause to do and performed all work and labor necessary to be done and performed upon said premises in order to comply with the laws of the United States.

The party of the second part hereby agrees to advance to the party of the first part, *if required,* the amount of fees required at the land office in order to make and perfect such filing,

and all necessary expenses of the party of the first part in connection therewith, not to exceed the sum of $60.00, and the party of the first part agrees to repay to the party of the second part all sums so advanced at the time and in the manner hereinafter designated.

The party of the second part further agrees that after final proof shall have been made upon said claims, he will, *at the option of the party of the first part*, procure for the party of the first part a loan not to exceed the sum of $720.00, to be secured by a first mortgage upon said claim, and immediately upon procurement of such a loan all sums of money herein stipulated to be paid to the party of the second part by the party of the first part, together with all sums of money advanced by the party of the second part to the party of the first part under this agreement shall become due and payable, and shall be paid out of the loan so secured; and it is further understood by and between the parties hereto that the payment by the party of the first part to the party of the second part of all sums of money hereinbefore designated shall be conditional upon the procurement by the party of the second part of the loan hereinbefore mentioned, *if the same shall be required.*

In case the party of the first part shall not wish to avail himself of the loan hereinbefore

mentioned, then, and in that event, all moneys advanced to the party of the first part by the party of the second part under this agreement, together with all sums of money hereby agreed to be paid to the party of the second part by the party of the first part shall become due and payable as soon as final proof shall have been made upon said claim. And the party of the first part hereby agrees to make said final proof as soon as the laws of the United States have been complied with, (in regard to residence and cultivation.)"

"Witness our hands the year and day first above written."

VIII.

That in and by said instrument and document above mentioned, to which he induced and persuaded each of said entrymen to subscribe or assent, the said defendant, Willard N. Jones, intended to conceal his design and intention to acquire title to the lands which were entered and applied for by the said entrymen as aforesaid, and to conceal the fact that it was the intention and purpose as hereinafter set forth, of the said defendant, Willard N. Jones, and said entrymen, to retain the then places of residence of each of said entrymen, and that it was not intended by the said Willard N. Jones or any of said entrymen, to reside upon or make their home upon the lands entered and applied for by them, as required by law, before

the issuance of patent thereto; that all of said entrymen at the time of their said application and entries, resided in Portland, Multnomah County, Oregon, except the entryman Benjamin S. Hunter, who then resided in Dundee, Yamhill County, Oregon, and neither the said Willard N. Jones or any of said entrymen at the time of making said applications and entries, or at any other time, intended to establish a residence upon the lands entered by said entrymen respectively, or to reside thereon; and the said Willard N. Jones at the time of said applications and entries and each of them, well knew and each of said entrymen well knew, that none of said entrymen intended to establish a residence upon the lands entered or to be entered by them respectively, or to reside thereon during the life of their respective homestead entries.

IX.

That it was further wrongfully and fraudulently intended and designed by the said Willam N. Jones, at and prior to said application and entries aforesaid, and thereafter during the life of the said homestead entries respectively, that each of said entrymen should falsely make proof before the officers of the United States having authority relating to and over the public lands, and in the form prescribed by law to the effect, among other things, that each of said entrymen had established a residence upon the lands entered by him respectively, and had resided continuously thereon for

the length of time prescribed by law, and that each of said entrymen had reduced to cultivation and cultivated a substantial portion of said lands, and that they had made substantial improvements thereon, when, in truth and in fact, as the said Willard N. Jones well knew, none of said entrymen would at the time of making said proof, have established a residence upon the lands entered by him, nor resided thereon, and would not have cultivated any part thereof nor have made any improvements thereon.

X.

That thereafter, in order to carry out the said fraudulent intention and design to acquire title to said lands and to procure said entrymen to make false, fraudulent and collusive applications, affidavits, entries and proofs as aforesaid, and pursuant to the fraudulent and collusive understanding and agreement entered into between the said Willard N. Jones and each of said entrymen and applicants, the said Willard N. Jones caused notice to be given as required by law, of the intention of the respective entrymen to make homestead proofs on the lands embraced in their respective entries; that thereafter, each of said entrymen offered and made homestead proof in the form prescribed by law and submitted the same to the officers of the United States Land Office at Oregon City, Oregon, upon the following dates:

Entrymen	Date of Proof	Date and No. of Final Certificate	
Benjamin S. Hunter	12-23-01	12-23-01	6477
William Teghtmeier	5-26-02	5-26-02	6525
Richard D. Depue	11-25-01	11-25-01	6457
Joseph Gillis	11- 4-01	11- 4-01	6443
Thomas Johnson	11- 4-01	11- 9-01	6446
John. L. Wells	5-26-02	5-26-02	7427
Edward C. Brigham	12-23-01	12-23-01	6476
Anthony Gannon	11-25-01	11-25-01	6458

That each of said entrymen, in conformity with said notices of intention to make proof above mentioned, and pursuant to their respective intentions to make false, fraudulent and collusive homestead applications, affidavits and entries and proofs thereon as aforesaid, offered and made homestead proof and submitted the same to the officers of the United States Land Office at Oregon City, Oregon, at the dates above set forth; that in and by said homestead proof, each of said entrymen by himself and two witnesses falsely and fraudulently represented that he had as required by law, established a residence upon and resided upon the land embraced in his said entry continuously after the alleged establishment of residence thereon until the time of said proofs, and had made substantial improvements thereon as set forth in said proof; that he had been only temporarily absent from said lands for a short time for the purpose of earning money to improve the same, and those entrymen

having families, each further falsely gave proof by himself and witnesses that his family resided on the claim in the absence of the entryman; that he had cultivated that portion of said lands specifically set out in his said proof and that he had not conveyed any part of said lands and had not made any contract directly or indirectly, whereby the title which he might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself; and that he was acting in good faith in perfecting the entry, when in truth and in fact, as each of said entrymen and his witnesses then and there well know at the time of making said proofs, had not established a residence upon said lands and had never resided thereon and had no improvements thereon, and none of the said entrymen as they and their witnesses well knew, had cultivated that part of his said entry set forth in his homestead proof, or any part thereof, for the time set forth in said proof or at any time, but if any part of any of said homestead entries was cultivated, the same was done by the defendant, Willard N. Jones, and all improvements made thereon was made by the defendant, Willard N. Jones, and not by any of said entrymen; and plaintiff alleges that none of said entrymen had acted in good faith or was acting in good faith in perfecting said entry, but was making the same upon speculation and not for the purpose of making or securing for himself or his fam-

ily, a home; that in truth and in fact, all of said entrymen after the making of their respective entries as aforesaid, continued at all times during the life of their respective entries, to reside at Portland, Oregon, except Benjamin S. Hunter, who resided at all said times at Dundee, Oregon, as aforesaid; that no improvements were made upon any of said lands during the life of said homestead entries, with the exception that the said defendant, Willard N. Jones, for the purpose of falsely and fraudulently making it appear that each of said entrymen resided upon his respective entry, had a house thereon built, a small, flimsy, uninhabitable shack upon the lands within each of said entries, shortly before said proofs were made;

And the said Willard N. Jones, also in furtherance of said fraudulent and collusive purpose, caused a small tract upon each of said entries, in extent less than an acre, to be scratched over in order to give a semblance of a foundation for the statements of the entrymen and their witnesses that a portion of their respective entries had been cultivated.

XI.

That the defendant, Willard N. Jones, paid to the officers of the United States, all sums of money as fees and otherwise, exacted of the several entrymen above named, and furnished proof witnesses and their expenses, in connection with their said entries, and the same was paid and said proofs

made, for the purpose of defrauding the United States out of the lands embraced in said respective entries, and the said Willard N. Jones knowingly induced and procured each of said entrymen to make said false and fraudulent proofs aforesaid and paid all the expenses of each in relation thereto and connected with said entries;

That the land offices of the United States at Oregon City, Oregon, being ignorant of the false and fraudulent representations made by the said entrymen in their respective homestead proofs and having no means of ascertaining the truth thereof, upon the receipt of said sums of money as fees and upon the purchase price for said lands, the same being furnished and paid by the defendant, Willard N. Jones, and upon the submission of the said proofs, issued certificates to each of said entrymen to the effect that upon presentation thereof to the Commisisoner of the Genral Land Office, the entrymen named therein would be entitled to receive a patent for the land described in his homestead entry; that the dates and numbers of the final certificates so issued are as set forth in paragraph X hereof:

That shortly after submission of final proof upon said homestead entries as hereinbefore set forth, and the issuance of said final certificates, each of said entrymen executed a mortgage to the defendant, Willard N. Jones, and received a sum of money from him in conformity with the instru-

ment to which each of said entrymen subscribed or assented, as set forth in paragaph VII hereof.

XII.

That thereafter, the officers of the United States Land Office at Oregon City, Oregon, transmitted to the General Land Office of the United States, the papers and testimony relating to each of said homestead applications, entries and proofs; and thereafter, notwithstanding the facts hereinbefore mentioned and set forth, the President of the United States and the officers of the Department of the Interior and the General Land Office of the United States, being ignorant of the false and fraudulent character thereof as above set forth, and having no means of ascertaining the same, did issue to each of said applicants and entrymen, a patent purporting to convey to the respective applicants and entrymen, the land described in their respective applications and entries and upon the dates following:

Entryman.	Date.
Benjamin S. Hunter	September 26, 1902
Oliver I. Connor	December 30, 1902
William Teghtmeier	May 19, 1903
Richard D. Depue	December 30, 1902
Joseph Gillis	December 30, 1902
Thomas Johnson	September 26, 1902
John L. Wells	October 12, 1903
Edward C. Brigham	June 8, 1903
Anthony Gannon	June 8, 1903

XV.

That all of the false and fraudulent representations made by the several entrymen and their witnesses as hereinbefore set forth, were with the knowledge and at the solicitation of the said defendant, Willard N. Jones, and with the intent to deceive and defraud the United States out of the use of title to and possession of the lands hereinbefore described, and the complainant relied upon the false and fraudulent representations so made as aforesaid, and was deceived and defrauded thereby, and by reason of such false and fraudulent representations and unlawful, collusive and corrupt agreement and understanding between said entrymen and the said defendant, plaintiff was wrongfully and unlawfully induced to issue said patents and part with the title to said lands to its damage in the sum of One Hundred Thirty-three Thousand ($133,000) Dollars.

XVI.

That at the time of the applications and entries of said lands and at the time of the issuance of patents therefor as aforesaid, the lands hereinbefore described were of the reasonable aggregate value of Thirty-one Thousand, Four Hundred ($31,400.00) Dollars, and said lands are now of the reasonable aggregate value of the sum of One Hundred Thirty-three Thousand ($133,000.00) Dollars, and by reason of the fraudulent practices and represen-

tations, solicited, induced and committed by the said defendant, Willard N. Jones, as aforesaid, and relying upon which, plaintiff was wrongfully induced to issue patents for said lands as hereinbefore alleged, plaintiff was and is damaged in a sum of money equal to the full value of said lands, to-wit, the sum of One Hundred Thirty-three Thousand ($133,000.00) Dollars, and is entitled to recover the same from the defendant, Willard N. Jones.

WHEREFORE, plaintiff demands judgment against the defendant for the sum of $133,000.00, together with its costs and disbursements incurred herein.

JOHN McCOURT,
United States Attorney.

United States of America,
District of Oregon—ss.

I, John McCourt, being first duly sworn, on oath depose and say that I am United States Attorney for the District of Oregon, and that the facts set forth in the foregoing complaint are true as I verily believe. I base this affidavit of verification upon reports and affidavits submitted and presented to me by the agents and officers of the General Land Office of the United States, the agents and officers of the Interior Department of the United States, and the agents and officers of the Department of Justice of the United States, together with the official report of the evidence

taken and given in that certain criminal action against the defendant named in the foregoing complaint involving the matters and transactions set forth therein.

JOHN MCCOURT.

Subscribed and sworn to before me this 11th day of June, 1912.
(Seal)

FRANK L. BUCK,
Notary Public for Oregon.

Filed June 11, 1912. A. M. Cannon, Clerk.

And Afterwards, to-wit, on the 13th day of March, 1916, there was duly filed in said Court and cause an Amended Answer, in words and figures as follows, to-wit:

AMENDED ANSWER.

Comes now the defendant in the above entitled cause, and by this his amended answer filed by leave of Court first had, answering the complaint of the complainant therein, admits, denies and alleges as follows:

I.

Answering paragraph I of said complaint, this defendant admits the same to be true.

II.

Answering paragraph II of said complaint, this defendant admits the allegations thereof to be true.

III.

Answering paragraph III of said complaint, this defendant admits the allegations thereof to be true.

IV.

Answering paragraph IV of said complaint, this defendant denies that on or about August, 1900, or at any time or at all, this defendant, with a view to or with the intention of acquiring title in himself or acquiring title in himself and persons or any person associated or interested with him to the lands in said complaint described, or any thereof, or to such lands or any thereof together with a large quantity of or any other lands ceded and open to settlement under the homestead laws of the United States, or otherwise or at all, caused a large tract or any thereof, including the lands in the complaint described, or any thereof, to be cruised for the purpose of ascertaining the quantity of timber standing thereon, or otherwise, or at all, and denies that all of said lands were heavily timbered or very valuable for the timber thereon, but admits that some of said lands were heavily timbered.

V.

Answering paragraph V of said complaint, this defendant denies that on or between the 15th day of August, 1900, and the 25th day of February, 1901, or at any time or at all, this defendant, designing and intending, or designing or intending to

deceive the officers of the United States having authority relating to or over the public lands of the United States or any of them, or any such officers, or any person or persons, or to defraud or cheat complainant out of the title, use, or possession of a large or any portion of its unappropriated public lands open to settlement and entry under the homestead laws of the United States, or any land whatsoever, or otherwise or at all, by means of soliciting or procuring persons qualified or otherwise to make homestead entries on said lands or any thereof to make false or fraudulent or collusive homestead entries upon portions or any of said ceded lands then or at any time unappropriated or otherwise or at all, did, on or between the dates last aforesaid, or at any time or at all, solicit or procure the persons named in the said complaint or in paragraph 6 thereof, or any of them, or any other person or persons, to go with a large or any number of other persons or any other persons, or at all, to make homestead applications or affidavits at the United States Land Office at Oregon City, Oregon, or elsewhere, or at all, for the lands in the complaint described or any thereof, or for such lands or any thereof together with any other land or lands.

VI.

Answering paragraph VI of said complaint, this defendant denies that the persons named in said paragraph were or that any of them was, or that

the persons in said paragraph mentioned, among others or with others, or with any person or at all, wrongfully or unlawfully solicited or procured by this defendant to make homestead applications, affidavits, or entries as in the complaint alleged, or otherwise, or at all, or to make such or any homestead applications or application, affidavits or affidavit, entries or entry. This defendant believes that the persons named in said paragraph VI on or about the dates therein mentioned respectively entered as homesteads under said Act of August 15th, 1894, the tracts of land which it is averred in said paragraph VI they entered under the homestead laws, but this defendant denies that he wrongfully or unlawfully solicited or advised or procured said parties or any of them to make such entries.

VII.

Answering paragraph VII of said complaint, this defendant admits that all of the lands in the complaint described were at the time of the applications and entries in the complaint mentioned vacant, unappropriated, non-mineral, public lands, subject to entry as homesteads under the said Act of August 15th, 1894, but this defendant denies that he solicited or procured said persons mentioned in paragraph VI of said complaint, or any of them or any person or persons, to apply for or enter said lands or any thereof, and denies that before the filing of such applications and entries or any of

them, or at any time or at all, this defendant prevailed upon or induced each or any of said entrymen to subscribe or assent to a written document, or to the written document or instrument set forth in paragraph VII of said complaint. This defendant, however, admits that a contract, in substance the same as that set forth in said paragraph VII, was entered into between this defendant and said parties respectively in paragraph VI of said complaint mentioned, under the circumstances and conditions, however, hereinafter in this answer averred, and not otherwise.

VIII.

Answering paragraph VIII of said complaint, this defendant denies that in and by, or in or by said instrument set forth in paragraph VII aforesaid the defendant intended to conceal his design or intention to, and denies that he ever had any design or intention to acquire title to the lands which were entered and applied for by the said entrymen or any thereof, or intended to conceal the alleged fact, and denies that it was a fact that it was the intention or purpose of this defendant and the said entrymen or of this defendant or any of them that said entrymen or any of them should retain the then places of residence of said entrymen, or that any of them should retain his then place of residence, and denies that it was not intended by the defendant or the said entrymen or any of them that said entrymen or any of them

should reside upon or make their or his home upon the lands entered and applied for as required by law before the issuance of patent thereto, and denies that neither this defendant nor any of said entrymen at the time of making said applications and entries, or at any time, intended that said entrymen or any of them should not establish a residence upon the lands entered or to be entered by them respectively or to reside thereon during the life of their respective homestead entries. This defendant admits that he did not intend to reside upon any of said tracts, but denies that he had any knowledge or information sufficient to form a belief that any of the said entrymen did not intend to reside upon the tract of land entered by him as required by law.

IX.

Answering paragraph IX of said complaint, this defendant denies that it was further or at all wrongfully or fraudulently intended or otherwise or at all intended or designed by defendant, at or prior to said applications and entries or any thereof or during the life of said homestead entries respectively or any thereof, or at, during or for any time whatever, or at all, that each or any of said entrymen should falsely make proof before the officers of the United States or any thereof having authority relating to or over the public lands, or otherwise, or in the form prescribed by law, or in any form, or at all, that each or any of said entry-

men had established a residence upon the lands entered by him respectively or had resided continuously thereon for the length of time prescribed by law or for any time, or that each of said entrymen or any of them had reduced to cultivation or cultivated a substantial portion of said lands or that they or any of them had made substantial improvements thereon, or should make any false proof or representations respecting said entries whatsoever at any time, and denies that in truth or in fact this defendant well or at all knew at any time that none of said entrymen would at the time of making final proof have established a residence upon the lands entered by him, or knew that in truth or in fact none of said entrymen had resided thereon or would have resided thereon or would not have cultivated any part thereof nor made any improvements thereon; and denies that this defendant ever at any time contemplated, designed, or intended that any of said entrymen should fail or neglect to or would or should not make the required residence, settlement and cultivation on the lands by them respectively entered, or would by any means or in any manner or by any proof falsely or fraudulently represent that they had made the required settlement, residence or improvements when in truth they had not.

X.

Answering paragraph X of said complaint, this defendant denies that in order to carry out said

alleged or any fraudulent intention or design to acquire said lands or to acquire title thereto, or to any thereof, or to procure said entrymen or any of them to make false or fraudulent or collusive applications, affidavits, entries or proofs as alleged in said complaint, or otherwise, or pursuant to the alleged fraudulent or collusive, or any fraudulent or collusive understanding or agreement alleged in said complaint to have been entered into between this defendant and each or any of said entrymen and applicants or otherwise, or for any fraudulent or wrongful or improper reason, design, motive or purpose whatsoever, or at all, this defendant caused notice to be given as required by law or otherwise of the intention of the respective entrymen to make homestead proofs on the lands embraced in their respective entries, or on any thereof. This defendant is informed that it is true that each of said entrymen made homestead proof in the form prescribed by law and submitted the same to the officers of the United States Land Office at Oregon City, Oregon, on or about the dates alleged in said paragraph X of said complaint. This defendant denies, however, that said entrymen or any of them, pursuant to any intention or intentions to make false or fraudulent or collusive homestead application, affidavit, entry, or proof, offered or made homestead proof or submitted the same to the officers of the United States Land Office at Oregon City, Oregon, or elsewhere, at the dates or any

date in said complaint alleged, or at any time or otherwise, or at all. As to whether or not in truth or in fact in or by said alleged homestead proof on any homestead, each of said entrymen, or any of said entrymen, either by himself or by or with two or any number of witnesses, or at all, falsely or fraudulently represented that he had as required by law established a residence upon or resided upon the land embraced in his said entry continuously after the alleged establishment of residence thereon until the date of said proof, or had made substantial improvements thereon as set forth in said proofs or any thereof, or that he had been only temporarily absent from said lands or any thereof for a short time for the purpose of earning money to improve the same; or as to whether or not said entrymen having families, or any entryman having a family, or otherwise, falsely gave proof by himself and witnesses, or otherwise, or at all, that his family resided on the claim in the absence of the entryman or that he had cultivated that portion of said lands specifically set out in said proof or any thereof, or that he had not conveyed any part of said lands or had not made any contract, directly or indirectly, whereby the title which he might acquire from the government of the United States should inure in whole or in part to the benefit of any person except himself, or that he was acting in good faith in perfecting the entry when in truth or in fact said entrymen or any of them, or the

witnesses or witness of any of them then or there well or at all knew at the time of making said proofs or any thereof that said entrymen or any thereof had not established a residence upon said lands or any thereof or had never resided thereon or had no improvements thereon; or as to whether or not none of said entrymen had not, or knew, or their witnesses or any of them knew or well knew or at all knew said entrymen had not or any of them had not cultivated that part of his said entry set forth in his homestead proof or any part thereof for the time set forth in said proof or at any time, this defendant denies that he has any knowledge or information sufficient to form a belief, and therefore denies the said allegations and each and every thereof. This defendant denies that if any, or whatever part of said homestead entries was cultivated, the same was done by this defendant, and denies that all or any of the improvements made thereon were made, or any improvement thereon or on any of said lands was made by this defendant, and denies that the improvements on said lands or any thereof were not made by said entrymen; but avers on the contrary that all improvements made on said lands were made by said entrymen and that each entryman made all of the improvements on the land by him entered, and, as defendant believes, made all improvements required by law. This defendant denies that none of said entrymen acted in good faith or was acting in good

faith in perfecting his said entry and denies that in making such proofs or making such entries said entrymen or any of them made the same upon speculation and not for the purpose of making or securing for himself and family a home. Denies that in truth or in fact all or any of said entrymen, after making their respective entries as aforesaid, continued at all times or at any time during the life of their respective entries to reside at Portland, Oregon, excepting the said entryman Benjamin S. Hunter, and denies that during such time said Hunter resided at all times, or any time, or at all, at Dundee, Oregon, or elsewhere than on the land so entered by him. Denies that no improvements were made upon any of said lands during the life of said homestead entries and denies that this defendant for the purpose of falsely or faudulently making it appear that each of said entrymen or any thereof had resided upon his respective entry or otherwise, had a house built thereon, or a small, flimsy, or uninhabitable, or other shack of house built upon lands within each of said entries, or any thereof, shortly before said proofs or any thereof were made, or at any time or at all. Denies that this defendant in furtherance of said alleged fraudulent and collusive purpose, or otherwise, or at all, caused a small tract or any tract upon each or any of said entries, in extent less than an acre, or otherwise, to be scratched over in order to give a semblance of a foundation for the statement of the

entrymen or any of them or their witnesses or any witness, or otherwise, or at all, that a portion of their respective entries had been cultivated.

XI.

Answering paragraph XI of said complaint, this defendant denies that he paid to the officers of the United States or any of them all or any of the sums of money as fees or otherwise exacted of the several entrymen in the complaint mentioned, or any of them, and denies that he furnished proof witnesses or any proof witness or provided or paid the expenses of proof witnesses or any thereof in connection with the said entries or any thereof. Denies that said alleged payments or any thereof were made or that said proofs or any thereof were made for the purpose of defrauding the United States out of the lands embraced in said respective entries or any thereof, or any land whatever, and the defendant denies that he knowingly or otherwise, or at all, induced or procured each or any of said entrymen to make said alleged or any false or fraudulent or any proofs, or paid the expenses of each or any entryman or witness in relation thereto or connected with said or any of said entries. This defendant believes it is true, and therefore he does not deny that the land officers of the United States at Oregon City issued certificates to each of said entrymen to the effect that upon presentation thereof to the Commissioner of the General

Land Office the entryman therein named would be entitled to receive a patent to the land described in his homestead entry; and this defendant does not deny that the said land officers of the United States at Oregon City, Oregon, were ignorant of any false or fraudulent representations made by the entrymen aforesaid in their respective homestead proofs, but this defendant denies that any false or fraudulent representations were made by said entrymen in respect of their homestead proofs. This defendant admits that shortly after the issuance of the final certificates each of said entrymen executed to this defendant a mortgage as hereinafter more particularly set forth and described, but not otherwise, and for money advanced as hereinafter more particularly explained and alleged, and not otherwise.

XII.

Answering paragraph XII of said complaint, this defendant is informed and believes, and therefore admits it to be a fact, that after final proofs had been made and submitted in respect of the entries in the complaint mentioned, the officers of the United States Land Office at Oregon City, Oregon, transmitted the papers and testimony relating to each of said homestead applications to the General Land Office of the United States, and that thereafter the President of the United States and the officers of the Department of the Interior

and the General Land Office did issue to each of said applicants and entrymen a patent purporting to convey to the respective applicants and entrymen the land described in their respective applications and entries and upon the dates mentioned in said paragraph XII; but this defendant denies that such patents were issued notwithstanding the alleged facts and alleged frauds and alleged false representations and testimony in the complaint averred or any thereof, and denies that the President of the United States and the officers of the Department of the Interior and of the General Land Office of the United States or any of them, being ignorant of the alleged false and fraudulent character of said papers and testimony, issued said patents or caused the same to be issued, but on the contrary, this defendant denies that there was any false or fraudulent proofs, entries or papers submitted to said officers or any of them.

XIII.

Answering the thirteenth paragraph of said complaint (designated therein as paragraph XV), this defendant denies that all or any of the alleged false or fraudulent representations made by the several entrymen or any of them, or made by said entrymen and their witnesses or any of them, or any witness or person, or any false or fraudulent representations in the said complaint averred, were made with the knowledge or at the solicitation of this defendant or made with the intent to deceive

or defraud the United States out of the use of or title to or possession of the lands or any of the lands in the complaint described, and denies that the complainant relied upon the alleged or any of the false and fraudulent, or false or fraudulent, or any false or fraudulent representation alleged in the complaint to have been made, or was deceived or defrauded thereby, and denies that by reason of such alleged false and fraudulent representations or of any false or fraudulent representation or unlawful, collusive, or corrupt agreement or understanding between said entrymen or any of them and this defendant, plaintiff was wrongfully or unlawfully induced to issue said patents or any thereof, or part with the title to said lands or any thereof, to its damage in the sum of $133,000.00, or in any sum or amount whatever.

XIV.

Answering paragraph XIV of said complaint (designated therein as paragraph XVI), this defendant denies that at the time of the applications and entries or applications or entries on said lands or any thereof, or at the time of the issuance of patents therefor or for any thereof, the lands in the complaint described were of the reasonable, aggregate value of $31,400.00, or any other sum or amount whatever save and except that each tract of land entered was worth the amount of the fees required to be paid to the officers of the United States in making and perfecting a homestead entry

therefor, and denies that said lands are now of the reasonable, aggregate value of the sum of $133,000.00, or any other greater sum than $....., and denies that by reason of the alleged fraudulent practices and representations or of any fraudulent practice or representation, solicited, induced or committed by this defendant, as in the complaint alleged, or otherwise, or at all, or relying upon which the plaintiff was wrongfully induced to issue patents for said lands or any thereof, and denies that plaintiff was thereby or by reason of any act or thing alleged in the complaint, or otherwise, or at all, damaged in a sum of money equal to the full value of said lands or in any sum or amount whatever, or in the sum of $133,000.00, or any sum or amount whatever, or is entitled to recover the same or any amount whatsoever from this defendant.

And this defendant, for A FIRST FURTHER AND SEPARATE ANSWER AND DEFENSE, avers:

I.

That heretofore, some time in the year 1900, the lands described in the complaint and other lands in the vicinity thereof being open for entry under the homestead laws of the United States, and being largely timbered lands, this defendant did cause said lands and others to be cruised for the purpose of ascertaining approximately the amount of timber on the several legal subdivisions and for the

purpose of ascertaining the nature and character of each legal subdivision, to the end that this defendant might engage in the business of locating thereon qualified persons under the homestead laws who desired to enter land subject to entry under such laws. The plan adopted by this defendant is substantially set forth in the form of contract set out in paragraph VII of the complaint in the above entitled cause. That at different times, and prior to making their respective entries, this defendant entered into a contract with the several parties mentioned and named in paragraph VI of said complaint, which contract in each instance was in substantially the form of the form of contract set forth in paragraph VII of said complaint aforesaid. That in each instance it was the desire, purpose and intention of this defendant that said parties respectively and each party or person with whom he contracted as aforesaid should in all respects comply with the homestead laws of the United States, and the purpose and object of this defendant in entering into such contracts was to earn the fee charged for locating the entrymen. That in each instance this defendant complied strictly with the terms of the agreement entered into between him and the entryman, and in each instance this defendant avers that he believed at the time proof was made that each entryman had faithfully and honestly complied with the homestead laws of the United States in the matter of

making settlement, cultivation, improvements, and proof under the homestead laws of the United States, and after making the required settlement, cultivation, improvements and proofs, the entrymen executed to this defendant in each case a mortgage on the land entered to secure to this defendant the payment of the amount by him advanced under such contract, the same being the mortgage in the complaint mentioned and referred to. That in all said matters and transactions and in every matter connected with said entries this defendant acted in good faith and without any intention or purpose to cheat, defraud, or deceive the complainant.

For a SECOND FURTHER AND SEPARATE ANSWER AND DEFENSE to this action, this defendant avers:

That the cause of action in the complaint alleged accrued more than six years next prior to the date of filing the said complaint in this action, and did not accrue at any time within the six years next before the commencement of this action.

And this defendant for a THIRD FURTHER AND SEPARATE ANSWER AND DEFENSE, avers:

I.

That the several tracts of land in the complaint described as having been respectively entered by the entrymen mentioned in said complaint, were at the time the same were entered subject to entry as

homesteads under and pursuant to the Act of Congress of August 15th, 1894, and each of said tracts of land was entered as a homestead at the time and by the person alleged in the said complaint, under said Act of Congress, and not otherwise, except that the said entrymen did not pay the sum of $1.50 per acre, or any sum per acre, for said lands so entered, or any thereof, (except that said entryman Wells paid for commutation as hereinafter averred), because of the Act of Congress of May 17th, 1900, referred to in paragraph III of said complaint. This defendant further alleges that the said Act of August 15th, 1894, among other things, required and provided that as a condition precedent to acquiring title to any such lands, under the homestead laws, an entryman should actually reside on and cultivate the lands so entered for the period of three years, and that such actual residence should be established by the testimony of two witnesses in addition to the testimony of the entrymen.

II.

That the entrymen named in the said complaint, namely, Benjamin S. Hunter, Oliver I. Conner, William Teghtmeier, Richard P. Depue, Joseph Gillis, Thomas Johnson, Edward C. Brigham, and Anthony Gannon, respectively entered the respective tracts of land in the complaint described and averred to have been by them respectively entered, under the said Act of August 15th, 1894, and

on the dates in the said complaint alleged. That none of the said entrymen last named, either by himself or by his final or homestead proof witnesses, or any witness produced by him, or otherwise, when he made his homestead or final proof, or at any time, claimed, represented or testified in making such proof, or any proof, or otherwise, that he had resided upon the said land by him entered for a period of three years or for any other or greater period than as follows: That is to say, the said Edward C. Brigham and his final proof witnesses stated and testified that he, the said Edward C. Brigham, first established a residence on the land by him entered as aforesaid in October, 1900, and his homestead or final proof, and the only proof made and submitted by him, was made and submitted on December 23d, 1901. That the said Anthony Gannon made final or homestead proof, and the only proof made by him under his said homestead entry, on the 25th day of November, 1901, and in making such proof stated and testified, as did his final proof witnesses, that he went upon and made settlement and first acquired a residence on the said tract by him entered October 1st, 1900. That the said Joseph Gillis made and submitted final or homestead proof under his entry aforesaid, and the only proof made by him under said entry, on the 4th day of November, 1901, and in making said final proof testified, as did also his final proof witnesses, that he first established his residence on

the land so entered by him on the 1st day of October, 1900. That the said Oliver I. Conner made his homestead or final proof, and the only proof made by him under his said homestead entry, on the 4th day of November, 1901, and in making such proof testified and represented that he had first made and established actual residence on the land so entered by him on the 26th day of September, 1900. That the said Benjamin S. Hunter made and submitted the homestead or final proof, and the only proof made by him under his said homestead entry, on the 23d day of December, 1901, and in making such proof testified and represented, as did also his final proof witnesses, that he had first made and established actual residence on the land so by him entered in September, 1900. That said Richard P. Depue made and submitted final proof, and the only proof made by him under his entry, on November 25th, 1901, and in making such final proof testified, as did his final proof witnesses, that he first established actual residence on the land so by him entered September 24th, 1900. That said Thomas Johnson made and submitted homestead or final proof, and the only proof made by him under his said entry, on the 9th day of November, 1901, and in making such proof testified and stated, as did his final proof witnesses, that he had first established a residence on the land so by him entered on September 26th, 1900. That said William Teghtmeier made and submitted final proof, and

the only proof made by him under his said entry, on the 26th day of May, 1902, and in making such final proof testified and stated, as did his final proof witnesses, that he first established an actual residence on the land so by him entered in September, 1900.

III.

That each of the said entrymen mentioned in the last above paragraph of this answer, in making his homestead or final proof also made proof of the fact that he had served in the Army or Navy of the United States for periods as follows:

Benjamin S. Hunter enlisted January 4, 1864; discharged December 16, 1865;

Oliver I. Conner enlisted May 2, 1862; discharged May 2, 1865;

William Teghtmeier enlisted June 1, 1861; discharged July 20, 1864;

Richard D. Depue enlisted January 14, 1864; discharged December 18, 1865;

Joseph Gillis enlisted August 2, 1862; discharged June 10, 1865;

Thomas Johnson enlisted November 13, 1861; discharged February 10, 1864;

John L. Wells enlisted September 4, 1864; discharged June 10, 1865;

Edward C. Brigham enlisted August 9, 1862; discharged June 4, 1865; and

Anthony Gannon enlisted September 19, 1861; discharged October 5, 1864;

And had been honorably discharged, and claimed credit under the provisions of sections 2304 and 2305, U. S. R. S. for such military service in lieu of residence on the land by him entered as aforesaid, to the extent of the difference between the period of residence shown by his proof submitted and the full term of three years aforesaid, which claim was in each case considered and allowed by plaintiff in lieu of such portion of the actual residence of three years by law required under said Act of August 15, 1894.

IV.

That the plaintiff and its agents and officers, in considering and passing on said final proofs, well knew that each of said entrymen and his final proof witnesses had therein testified, stated and claimed less than two years' actual residence on the part of such entryman, and neither the said plaintiff nor any of its agents or officers in considering said final proofs believed or understood, or had any reason to believe or understand, that any of said entrymen had represented or claimed to have resided upon said lands or any thereof for three years, but on the contrary the plaintiff and each and all of its agents and officers, by mistake of law, gave and allowed to each of said entrymen credit for military service as aforesaid, as a major part of the three years actual residence required by law, and by reason of such mistake of law, and not other-

wise, issued the final certificates and patents mentioned and referred to in the complaint.

V.

Defendant further alleges that the said entryman John L. Wells, referred to in the complaint of the plaintiff herein, in making the homestead or final proof mentioned in paragraph X of said complaint, claimed and availed himself of the benefit of the Act of Congress of January 26th, 1901, entitled "An Act to allow the commutation of homestead entries in certain cases," under and by the terms of which act a person making homestead was authorized to make homestead commutation proof under the provisions of Section 2301, Revised Statutes of the United States.

VI.

That under and by virtue of the Act of August 15th, 1894, and said Section 2301, the said entryman John L. Wells was required by law in making such homestead commutation proof to establish and show that he had actually resided upon the land so entered by him for a period of at least fourteen months.

VII.

That the said entryman Wells made such homestead commutation proof on the 26th day of May, 1902, and in making such proof testified as follows:

"Q. When was your house built on the land, and when did you establish actual residence there-

in? (Describe said house and other improvements which you have placed on the land, giving total value thereof.)

A. In August or September, 1900—August, 1900—log cabin 14x16, shingle roof—2 acres cleared—some apple trees—considerable of a roadway cut—2 acres fenced—about $300.00.

Q. Of whom does your family consist; and have you and your family resided continuously on the land since first establishing residence thereon? (If unmarried state the fact.)

A. I was unmarried when I filed. I have been married a little over a year and my wife has been with me on the land since then.

Q. For what period or periods have you been absent from the homestead since making settlement, and for what purpose; and if been previously absent did your family reside upon and cultivate the land during such absence?

A. Temporary absence about 4 months—when I was absent my wife was with me.

Q. How much time since entry have you actually lived upon the land?

A. Between the time of entry, viz., October 1, 1900, and the present time I have been there five times, remaining there each time from one to two weeks."

VIII.

And this defendant avers that by the answers and representations aforesaid the said entryman

Wells notified and advised the plaintiff that he had not actually resided upon said land to exceed ten weeks prior to the date of making such proof, which proof is the homestead proof referred to in the plaintiff's complaint. And defendant further avers that the said plaintiff and its officers and agents, in considering said final proof and in issuing the final certificate and patent referred to in the complaint to the said Wells, fully and well knew and understood that said Wells had not resided upon said land to exceed ten weeks, and so knowing and understanding, the said plaintiff issued such certificate and the patent to said Wells in the complaint mentioned.

For a FOURTH FURTHER AND SEPARATE ANSWER AND DEFENSE, this defendant avers:

I.

That each of the entrymen mentioned and referred to in paragraph II of the Third Further and Separate Answer herein, in making and submitting his final homestead proof in the complaint mentioned and referred to, personally and each of his final proof witnesses testified, stated and advised the plaintiff, its agents and officers, that he, the said entryman, had not resided upon the land by him entered as in the complaint described, or any thereof, prior to the making of his homestead or final proof in the complaint mentioned, for the period of three years, nor for any greater period

than from one to one and one-half years. That the plaintiff and its officers and agents, in considering said homestead or final proofs and in issuing the final certificates and patents in the complaint mentioned, well knew and understood that each of said entrymen had not resided upon the land by him entered in the complaint mentioned for three years prior to the making of the homestead or final proof in the complaint mentioned, nor for any greater period of time than from one to one and one-half years, but notwithstanding said knowledge and understanding, the plaintiff, its agents and officers, by mistake of law, erroneously issued said certificates and patents in the complaint mentioned.

II.

That the said entryman Wells, in making his homestead or final proof in the complaint mentioned, testified and stated and advised the plaintiff, its agents and officers, that he had not actually resided upon said land prior to the making of said homestead or final proof for a total period of more than ten weeks, and the said plaintiff, its agents and officers, in considering said final proof, well understood and knew that he, the said Wells, had not resided on said land as aforesaid for a period of more than ten weeks, but notwithstanding such knowledge the plaintiff, its agents and officers, by mistake of law, and not otherwise, erroneously issued said certificates and patents in the complaint mentioned. That said Wells paid plaintiff

for the tract, consisting of 160 acres, entered by him, in the complaint mentioned, the sum of $240.00, the full minimum price and value thereof, prior to the issuance of the patent therefor, in the complaint mentioned.

III.

That prior to the commencement of this action the said tracts of land in the complaint described as having been entered by and patented to the said entrymen Edward C. Brigham, Thomas Johnson, William Teghtmeier, and John L. Wells, were, for the full market value thereof, sold and conveyed to and purchased by, and are now owned and held by Chautauqua Lumber Company, a corporation; and the tracts in said complaint described as having been entered by and patented to said entrymen Anthony Gannon, Joseph Gillis, Oliver I. Conner, Benjamin S. Hunter, and Richard D. Depue, were, for the full market value thereof, paid by the purchaser, granted, bargained, sold and conveyed to, and are now owned and held by Sunset Timber Company, a corporation of the State of Oregon. That said Chautauqua Lumber Company and said Sunset Timber Company, hereinafter referred to as purchasers, each purchased the land so conveyed to it in good faith without any knowledge, notice, information or belief that the plaintiff claimed any interest therein, or in or to any thereof, or that there was any defect in the title thereto or to any thereof, and each of said purchasers in purchasing

said lands so to it conveyed, acted in good faith in all respects and without any knowledge, information, belief or notice whatsoever of the alleged frauds and deceits, or frauds or deceits, or any thereof in the complaint alleged, and each of said purchasers paid for each tract of the lands aforesaid to it conveyed the full market value thereof at the time of purchasing the same.

IV.

And this defendant avers that by reason of the premises, even if it shall be adjudged that the plaintiff is entitled to recover any sum in this action, it cannot have or recover a sum exceeding the Government minimum price of said lands by statute provided, namely, the sum of $1.50 per acre.

WHEREFORE, this defendant demands judgment that this action be dismissed and that he have and recover his costs and disbursements herein.

FULTON & BOWERMAN,
SCHWARTZ & SAUNDERS,
Attorneys for Defendant.

State of Oregon,
County of Multnomah—ss.

I, Willard N. Jones, being first duly sworn, depose and say, that I am the defendant in the above entitled cause and that the above and foregoing amended answer is true as I verily believe.

WILLARD N. JONES.

Subscribed and sworn to before me this 10th day of March, 1916.

C. W. FULTON,
Notary Public for the State of Oregon.

My commission expires July 10th, 1916.

State of Oregon,
County of Multnomah—ss.

Due service of the within Amended Answer by the delivery of a duly certified copy thereof as provided by law, at Portland, Oregon, on this 9th day of March, 1916, is hereby admitted.

E. A. JOHNSON,
Of Attoneys for Complainant.

Filed March 13, 1916. G. H. Marsh, Clerk.

And afterwards, to wit, on the 15th day of March, 1916, there was duly filed in said Court and cause a Demurrer to Amended Answer, in words and figures as follows, to wit:

DEMURRER TO AMENDED ANSWER.

Comes now the plaintiff above named, by E. A. Johnson, Assistant United States Attorney for the District of Oregon, and demurs to the second further and separate amended answer and defense of the defendant heretofore on March 13, 1916, filed in the above entitled court and cause, for the reason that the facts therein alleged are insufficient in law to constitute a defense to the complaint of plaintiff.

And demurs to the third further and separate amended answer and defense of the defendant heretofore on March 13, 1916, filed in the above entitled court and cause, for the reason that the facts therein alleged are insufficient in law to constitute a defense to the complaint of plaintiff:

And demurs to the fourth further and separate amended answer and defense of the defendant heretofore on March 13, 1916, filed in the above entitled court and cause, for the reason that the facts therein alleged are insufficient in law to constitute a defense to the complaint of plaintiff.

Dated at Portland, Oregon, this 15th day of March, 1916.

E. A. JOHNSON,
Assistant United States Attorney.

United States of America,
District of Oregon—ss.

Due, timely and legal service of the within demurrer by receipt by me of certified copy thereof is hereby admitted at Portland, Oregon, this 15th day of March, 1916.

C. W. FULTON,
Of Attorneys for Willard N. Jones, Defendant.

Filed March 15, 1916. G. H. Marsh, Clerk.

And afterwards, to wit, on Friday, the 31st day of March, 1916, the same being the 23rd judicial day of the regular March, 1916, term of said Court; present, the Honorable Charles E. Wol-

verton, United States District Judge presiding, the following proceedings were had in said cause, to wit:

ORDER ON DEMURRER.

This cause was heard upon the demurrer of the plaintiff to the second, third and fourth separate and further defenses pleaded in the amended answer filed by said defendant, and was argued by Mr. Everett A. Johnson, Assistant United States Attorney, and by Mr. C. W. Fulton and Mr. H. H. Schwartz, of counsel for said defendant.

ON CONSIDERATION whereof it is ORDERED and ADJUDGED that said demurrer be, and the same is hereby overruled, as to the third and fourth defenses and sustained as to the second defense.

And afterwards, to wit, on the 31st day of March, 1916, there was duly filed in said Court and cause, a Reply in words and figures as follows, to wit:

REPLY.

Comes now the complainant in the above entitled action, and by this reply denies each and every allegation contained in defendant's first further and separate answer and alleged defense, except as in the complaint of complainant alleged; and here replying to defendant's third and fourth further and separate amended answers and defenses, complainant admits, denies and alleges:

I.

Replying to paragraph I of defendants' third, further and separate amended answer, complainant alleges that the several tracts of land in the complaint described as having been respectively entered by the entrymen therein mentioned were, at the time the same were entered, subject to entry as homesteads under and pursuant to the act of Congress approved August 15, 1894, as amended by acts of Congress approved May 17, 1900, and January 26, 1901, and that each of said tracts of land was entered as a homestead at the time and by the person alleged in the complaint of complainant under said acts of Congress and not otherwise, and complainant admits that the said entrymen did not pay the sum of $1.50 per acre or any sum per acre for said lands so entered, or any thereof (except as said entryman Wells paid for commutation of his one of said entries) because and by reason of the provisions of said act of Congress approved May 17, 1900, and referred to in paragraph III of the complaint of complainant; and complainant further admits that by the provisions of said act of August 15, 1894, as amended by said act of Congress approved May 17, 1900, and upon claims made thereunder and not commuted under the provisions of said act of Congress approved January 26, 1901, three years actual residence on the land was required of the entryman to be established by such evidence as was required in homestead proofs,

and that such proof of such residence on the part of such entryman was prerequisite to the passing of title or issue of patent to the lands so entered, but complainant denies each and every other allegation of said paragraph of said third further and separate amended answer contained.

II.

Replying to paragraph II of defendant's third further and separate amended answer, complainant admits that the entrymen named in the complaint of complainant, namely, Benjamin S. Hunter, Oliver I. Conner, William Teghtmeier, Robert D. Depue, Joseph Gillis, Thomas Johnson, Edward C. Brigham and Anthony Gannon, respectively entered the respective tracts of land in the complaint described and averred to have been by them respectively entered under the said act of Congress approved August 15, 1894, as amended by said act of Congress approved May 17, 1900, and on the dates in the said complaint alleged, and complainant admits each and every other allegation in said paragraph II of said further and separate amended answer contained.

III.

Replying to paragraph III of defendant's third further and separate amended answer, complainant admits each and every allegation therein contained and the whole thereof.

IV.

Replying to paragraph IV of defendant's third

further and separate amended answer, complainant admits that complainant and its agents and officers, in considering and passing on the final proofs of the entrymen Hunter, Conner, Teghtmeier, Depue, Gillis, Johnson, Brigham, and Gannon, well knew that each of said entrymen and his final proof witnesses had therein testified, stated and claimed less than two years actual residence on the part of such entryman upon his entry and admits that neither the said complainant nor any of its agents or officers, in considering said final proofs believed or understood or had any reason to believe or understand that any of said entrymen had represented or claimed to have resided upon said lands so by them entered, or any thereof, for three years, and admits that complainant and each and all of its agents and officers gave and allowed to each of said entrymen credit for military service as aforesaid, as a major part of the three years' actual residence required by said act of Congress approved August 15, 1894, as amended by said act of Congress approved May 17, 1900, and issued the final certificates and patents to said entrymen mentioned and referred to in the complaint of complainant, but complainant denies each and every other allegation in said paragraph of said third further and separate amended answer contained, and avers that the issuance of said final certificates and patents was induced by the fraud heretofore alleged of defendant and of said entrymen and witnesses aforesaid;

and complainant further alleges but for the said fraud so by defendant and by said entrymen and proof witnesses practiced upon complainant as in the complaint thereof alleged, none of said final certificates or patents would have been by complainant issued.

V.

Replying to paragraphs V and VI of the third further and separate amended answer of defendant complainant admits each and every allegation in said paragraphs contained and the whole thereof.

VI.

Replying to paragraph VII of the third further and separate amended answer of defendant, complainant admits that the said entryman Wells made commutation homestead proof on said 26th day of May, 1902, and in making such proof testified, among other things, substantially as is set forth in said paragraph VII aforesaid, but complainant denies that the whole of the testimony and proof of said Wells is in said paragraph set forth, and avers that that portion of the testimony and proof set forth in said paragraph VII is but a part and portion of the fraudulent and false testimony and final proof submitted by said Wells and by his said witnesses; and complainant avers that on said 26th day of May, 1902, and as a part of his final homestead proof, and in addition to the testimony in said paragraph VII of said further and separate

amended answer set forth, the said Wells falsely swore and testified, among other things, as follows:

"I, John L. Wells, claiming the right to commute under Section 2301 of the Revised Statutes of the United States, my homestead entry No. ——, made upon the S½ SE¼ and Lots 1 and 2, Sec. 10— NE¼ NE¼ section 15, township 9 S range 10 W, do solemnly swear that I made settlement upon said land on the —— day of August, 1900, and that since such date, to wit: On the —— day of August, 1900, I have built a house on said land, and have continued to reside thereon up to the present time."

And among other things, as follows:

"Q. Why have you not spent more time upon your claim?

A. I had to get away to get my living as I could not get a living on the claim and had to earn my living. I am an insurance agent and have been attending at the local office in Portland upon this business, and thus only temporarily absent from my claim for this purpose. I do not own any home anywhere except upon this claim. My wife was there with me in August, 1901, remaining there with me two weeks. It is impossible for us to remain steadily upon the tract in its present condition, and we have done the best we could to fulfill the law and at the same time earn a living for ourselves."

And among other things, as follows:

"I, John L. Wells, having made a homestead entry on the S½ SE¼ and lots 1 & 2, section 10, and

NE¼ NE¼ section No. 15, in township No. 9 S, range No. 10 W., subject to entry at Oregon City, Oregon, under Section 2301 of the Revised Statutes of the United States do now apply to perfect my claim thereto by virtue of Section 2331 of the Revised Statutes of the United States, and for that purpose do solemnly swear that I am a native born citizen of the United States; that I have made actual settlement upon and have cultivated and resided upon said lands since the ——— day of August, 1900, to the present time."

And complainant further avers that by the sworn testimony and answers of George West, one of the witnesses upon final proof of the said Wells, and given on said 26th day of May, 1902, it was by said West and by the fraudulent procurement of said Jones as in the complaint of complainant alleged, falsely and fraudulently testified, among other things, as follows:

"Q. When did claimant settle upon the homestead, and what date did he establish actual residence thereon?

A. August, 1900—same time.

Q. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried state the fact.)

A. He has lived there continuously, his wife has lived there while she was well.

Q. For what period or periods has the settler been absent from the land since making settlement, and for what purpose, and if temporarily absent did claimant's family reside upon and cultivate the land during such absence?

A. He has been off for two or three months at one time on business—at first he was unmarried, but his wife has lived on the place since except when he was off on business."

Complainant further avers: That by the sworn testimony and answers of William Teghtmeier, one of the witnesses, upon final proof of the said Wells, and given on the 26th day of May, 1902, it was by said Teghtmeier and by the fraudulent procurement of said Jones, as in the complaint of complainant alleged falsely and fraudulently testified among other things as follows:

"Q. When did claimant settle upon the homestead and at what date did he establish actual residence thereon?

A. August 26, 1900, I think—same date.

Q. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried state the fact.)

A. He is married—they have lived there continuously.

Q. For what period or periods has the settler been absent from the land since making settlement and for what purpose and if temporarily absent

did claimant's family reside upon and cultivate the land during such absence?

A. No, he has never been absent."

VII.

Replying to paragraph VIII of the third further and separate amended answer of defendant complainant admits that the answers and representations of said entryman Wells in paragraph VII of said third further and separate amended answer of defendant set forth and by that portion of the final proof of said entryman Wells, the said Wells notified and advised plaintiff that he had not been actually present upon his said land and entry in excess of the total period of ten weeks prior to defendant making such final proof and which said final proof is the homestead proof referred to in complainant's complaint, and complainant admits that complainant and its officers and agents in considering said final proof of said Wells and in issuing the final certificate and patent to said Wells referred to in said complainant's complaint knew and understood that said Wells had not been actually present upon his said homestead entry and land in excess of said total period of ten weeks and so knowing and understanding that complainant issued said certificate and patent to said Wells in said complaint mentioned, but complainant denies each and every other allegation in said paragraph contained, and further alleges that but for

the said fraud so by defendant and by the said Wells and his proof witnesses practiced upon complainant as in the complaint thereof alleged, the said final certificate or patent would not have been by complainant to said Wells issued.

VIII.

Replying to paragraph I of the fourth further and separate answer of the defendant, complainant admits that each of the entrymen mentioned and referred to in paragraph II of the third further and separate amended answer herein, in making and submitting his final homestead proof in the complaint mentioned and referred to, personally, and each of his final proof witnesses testified, stated, and advised the plaintiff, its agents and officers, that he, the said entryman, had not resided upon the land by him entered as in the complaint described or any thereof prior to the making of his homestead or final proof in the complaint mentioned for a period of three years nor for any greater period generally than from one to one and one-half years, and in one instance (Teghtmeier) one and three-fourths years, and complainant admits that complainant and its officers and agents, in considering said homestead or final proofs and in issuing the final certificates and patents in the complaint mentioned well knew and understood that each of said entrymen had not resided upon the land by him entered in the complaint mentioned

for three years prior to the making of the homestead or final proof in said complaint mentioned, nor for any greater period of time than that shown by said proof of said entrymen in each entry, and that complainant and its agents and officers, notwithstanding said knowledge and understanding, issued said certificates and patents in the complaint mentioned, but complainant denies that said certificates and patents were issued by complainant and its agents and officers by mistake or error of law; and avers that the issuance thereof was induced by the fraud heretofore alleged of defendant and said entrymen and witnesses aforesaid; and complainant further alleges that but for the said fraud so by defendant and by said entrymen and proof witnesses practiced upon complainant as in the complaint thereof alleged, none of said final certificates or patents would have been by complainant issued.

IX.

Replying to paragraph II of said fourth further and separate amended answer of defendant, complainant admits that said Wells paid plaintiff for the tract consisting of 160 acres entered by him, in the complaint mentioned, the sum of two hundred forty ($240.00) dollars upon commutation of his said entry, and prior to the issuance of patent therefor as in complainant's complaint alleged, but complainant denies each and every other allegation in said paragraph contained.

X.

Replying to paragraph III of said fourth further and separate amended answer of defendant complainant admits each and every allegation therein contained and the whole thereof.

XI.

Replying to paragraph IV of said fourth further and separate amended answer of defendant, complainant denies each and every allegation therein contained, and the whole thereof.

WHEREFORE complainant demands judgment against defendant as in complainant's complaint heretofore demanded.

EVERETT A. JOHNSON,
Assistant United States Attorney for Oregon.

United States of America,
District of Oregon—ss.

I, Everett A. Johnson, being first duly sworn depose and say that I am Assistant United States Attorney for the District of Oregon, and that I have prepared the foregoing reply and know the contents thereof, and that the allegations therein contained are true as I verily believe.

EVERETT A. JOHNSON.

Subscribed and sworn to before me this 31st day of March, 1916.

(Seal)

JOHN J. BECKMAN,
Notary Public for Oregon.

My commission expires February 16, 1917.

United States of America,
District of Oregon—ss.

Service of the within Reply is hereby acknowledged by acceptance of a copy thereof duly certified to as such by Everett A. Johnson, Assistant United States Attorney, this ——— day of March, 1916.

FULTON & BOWERMAN,
Of Attorneys for Defendant.

And afterwards, to wit, on Monday, the 2d day of December, 1918, the same being the 24th judicial day of the regular November term of said Court; present, the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to wit:

(Omit Title.)

Now at this day come the plaintiff by Mr. Bert E. Haney, United States Attorney, and Mr. Barnett H. Goldstein, Assistant United States Attorney, and the defendant above named by Mr. Jay Bowerman and Mr. John H. Hall, of counsel. Whereupon upon motion of Mr. Jay Bowerman, of counsel for said defendant, IT IS ORDERED that the appearance of Mr. John H. Hall be and the same is hereby entered as attorney for said defendant. And thereupon this being the day set for the trial of this cause now come the following named jurors to try the issues joined, viz: E. E. Robbins, Newell G. Patterson, Montford L. Higgins,

J. A. Elledge, Geo. P. Litchfield, H. B. Johnson, Harry Ball, Benjamin F. Holman, Ezra Hart, William Jones, R. O. Ralston, and J. T. Young; twelve good and lawful men of the district who are accepted by both parties and duly impaneled and sworn. And the hour of adjournment having arrived the further trial of this cause is continued to tomorrow, Tuesday, December 3, 1918.

And afterwards, to wit, on Thursday, the 12th day of December, 1918, the same being the 33d judicial day of the regular November term of said Court; present, the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to wit:

(Omit Title.)

Now at this day come the parties hereto by their counsel as of yesterday, and the jury empaneled herein being present and answering to their names, the said jury return into court the following verdict, viz:

"We, the jury, sworn and empaneled to try the above entitled cause, find for the plaintiff and assess its damages in the sum of 18,204.84 dollars.

M. L. Higgins, Foreman."

Which verdict is received by the court and ordered to be filed. Whereupon, it is adjudged that said plaintiff do have and recover of and from said defendant said sum of eighteen thousand two hundred

and four 84/100 dollars, together with its costs and disbursements herein, taxed at $610.79, and that it have execution therefor.

Whereupon on motion of said defendant, it is ordered that he be and is hereby allowed thirty days from this date in which to file a motion for a new trial herein, and that he be, and is hereby, allowed sixty days from this date within which to submit his bill of exceptions herein.

And afterwards, to wit, on Monday, the 3d day of February, 1919, the same being the 77th judicial day of the regular November term of said Court; present, the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to wit:

(Omit Title.)

Now at this time come the plaintiff by Mr. Barnett H. Goldstein, Assistant United States Attorney, and the defendant above named by Mr. John H. Hall, of counsel. Whereupon this cause comes on to be heard upon the motion of the defendant for a new trial herein. Upon consideration whereof, it is ORDERED that said motion be and the same is hereby denied. Whereupon, upon motion of said defendant, it is ORDERED that he be and is hereby allowed to and including March 1, 1919, within which to prepare and submit his bill of exceptions herein.

Thereafter, and within the time prescribed by the court, defendant duly filed his Bill of Exceptions as follows:

(Omit Title.)

BE IT REMEMBERED, That the above entitled cause came regularly on for trial in the above entitled court on the 2d day of December, 1918, plaintiff appearing by Bert E. Haney, United States Attorney, and Barnett H. Goldstein, Assistant U. S. Attorney, and S. W. Williams, Special Assistant to the Attorney-General; defendant appearing in person and by John H. Hall and Jay Bowerman, his attorneys; a jury of twelve good and lawful men were duly empaneled and sworn to try the cause.

Plaintiff, in order to maintain the issues on its part, called as a witness one J. L. Wells, who testified that he had lived in the City of Portland for about 32 years, was a member of the Grand Army of the Republic; that he had known defendant Willard N. Jones about 35 years and also had known one Thaddeus Potter about 20 years; that he was engaged in the real estate and insurance business in the year of 1900 or thereabouts.

The following question was propounded to the witness by counsel for plaintiff:

"Q. Did you ever have any talk with the defendant Jones concerning locating any soldiers, old soldiers, on any homestead lands?"

To which defendant interposed the following objection:

"If the Court please, defendant desires to interpose an objection to this question and to the taking of any evidence in this case, any further evidence on the part of the witness, or any other witness, for the reason that the complaint, and the allegations in the complaint, admissions and allegations in the reply, do not show that the Government has any cause of action against the defendant."

Which objection was overruled by the Court, to which ruling defendant excepted and exception allowed.

The Court: "I suppose you base your objection on the ground that this case was decided against the Government by this Court?

Mr. Hall: Yes."

And to which question witness answered:

"A. I did."

While the same witness was on the stand, counsel for plaintiff offered in evidence the homestead proof and testimony of witness, Government Form 4-369, of John L. Wells, to the homestead entry of Edward C. Brigham, on Homestead Entry No. 13137, wherein he testified that the claimant settled upon the homestead about October 1, 1900, and established actual residence on the same date; that he and his family had been off the land occasionally but that had been their home; that they had been

absent temporarily for periods not to exceed 90 days at one time, and that he was then at work earning a living. And other testimony therein in response to questions contained in said homestead proof; and which proof was subscribed and sworn to by said John L. Wells before the Register of the United States Land Office at Oregon City.

And plaintiff also offered homestead proof and testimony of witness, said John L. Wells, on the same form, to the homestead entry of Richard D. Depue, wherein he testified that the claimant was an unmarried man and he had made his home and residence on the land; that he had not been absent to exceed 60 days at one time, and that was for the purpose of earning a living. Which proof was subscribed and sworn to by said John L. Wells before the Register of the United States Land Office at Oregon City.

Also, the homestead proof, testimony of witness John L. Wells, on the same blank and form, in support of the homestead entry of Benjamin S. Hunter, wherein the said Wells testified, among other things, that Hunter had lived on the land continuously and was only off to work, and that the periods of his absence were about 60 or 90 days while he was off working; and which proof was subscribed and sworn to by said John L. Wells before the Register of the United States Land Office at Oregon City.

After the identification of said papers and the identification of the signature by the witness, counsel for defendant objected to the introduction of said documents as being incompetent, irrelevant and immaterial. Which objection was overruled by the court, to which ruling counsel for defendant excepted and an exception was allowed by the court.

Said documents were then received in evidence and marked "Plaintiff's Exhibits No. 4, 5 and 6."

To the same witness was propounded the following question (page 40 of testimony):

"Q. Did you also secure filings for soldiers' widows?"

Which was objected to by defendant as being wholly immaterial. Which objection was overruled by the court, to which ruling defendant excepted, and exception allowed.

To which question witness answered:

"A. I did.

Q. In accordance with this same plan or scheme?

A. No, that was different.

Court: Were there any widows that filed?

Mr. Goldstein: Yes, your Honor. One of them went to patent.

Court: And they had no right to file?

Mr. Goldstein: They had no right to file.

Mr. Hall: The Government is not claiming anything here by reason of widows' patents.

Mr. Goldstein: I propose to prove also that one of them went to patent for which he appeared as proof witness in pursuance of this same plan and scheme.

Mr. Hall: Is that for the purpose of contradicting or impeaching your own witness?

Mr. Goldstein: No; merely for the purpose of putting in evidence the record of patent issued to soldier's widow which was secured from the Government by virtue of representations made to her at the request and instigation of defendant, all in pursuance of the same general scheme.

Mr. Hall: We have had no notice of this, your Honor. There is no notice contained in the pleadings that these matters were to be gone into. We have not prepared any defense as against them, and it is not material.

Court: What was your understanding with Mr. Jones and Mr. Potter about getting these people to settle on this land? Did that include getting of widows, as well?

A. Yes, without settlement.

Court: The widows were not to settle?

A. Without settlement, yes.

Court: You understood that?

A. Yes, I understood that, that it was without settlement.

Court: You understand that the law did not require widows to settle?

A. Yes.

Court: I will allow this testimony, according to the same plan. You may have your exception.

Mr. Hall: We save an exception on the ground it is incompetent, irrelevant and immaterial."

The witness further testified that the same plan was adopted with respect to soldiers' widows as to old soldiers' and that he was to receive $5.00 apiece for the procuring of soldiers' widows, which money was paid to him by Mr. Potter and Mr. Jones, and that he procured six or eight soldiers' widows to file.

Counsel for plaintiff then offered in evidence a paper that purported to be the form of contract to be entered into between soldiers' widows and Thad S. Potter, to which offer counsel for defendant objected as incompetent, irrelevant and immaterial.

"Mr. Hall: If the court please, we object to the introduction of the alleged form of contract offered by the Government in evidence, for the reason heretofore stated, and for the further reason that the contract does not purport to be between any persons and this defendant, but between a blank person and Thad S. Potter.

Mr. Goldstein: That is merely the form of contract. We don't say there was such a contract entered into. That is the form of contract that was entered into with the soldier's widow.

Mr. Hall: If this is the form of the contract,

then it is not admissible. 'Thad S. Potter' is printed in the contract.

Mr. Goldstein: I might say I want to follow this up by the deposition of Potter, to show that Potter was acting for Jones all the time.

Court: You will have to connect it up. I will admit it with that understanding.

Mr. Hall: We save an exception."

Thereupon, the document, being a blank form of agreement to be entered into between ....., as party of the first part, and Thad S. Potter as party of the second part, reciting that the party of the first part is entitled to the benefit of the Act of Congress of June 8, 1872, giving homesteads to honorably discharged soldiers and sailors, their widows and orphan children, and that she desires to avail herself of the privilege; and the party of the second part, in consideration of the covenants and agreements of the party of the first part, agrees to give the party of the first part information that will enable her to locate and file a homestead on 160 acres of the public land of the United States situate within the State of Oregon, and agrees to pay the party of the second part, as compensation for such information and his services to be performed in the preparation of papers, the sum of $150.00—was offered in evidence by counsel for plaintiff, and said document, not being executed, was thereupon admitted in evidence by the court

and marked "Plaintiff's Exhibit 8" (pages 43 and 44 of testimony).

Upon the admission of the alleged form of contract, the court stated:

> "The only reason that the court admits this paper and the evidence with reference thereto in regard to the application of widows of old soldiers is to show the intent of the defendant in what he has done with regard to the cases that are on trial. Of course, those matters are not proof of the fact that is alleged in the complaint touching the settlement of these nine soldiers; but they may go in as showing with what intent the defendant, if he had any connection with them, induced these nine soldiers to file and settle upon this land."

The following question was propounded to the same witness by counsel for defendant (page 45 testimony):

"Q. Mr. Wells, was one of these soldiers' widows that you secured Esther P. Collins, do you remember?

A. Yes.

Q. And what, if anything, did you say to her with respect to the land to be filed on as to how she was to secure title and what was to be done with the land in pursuance of this understanding?"

To which question defendant objected on the ground that the same was irrelevant and imma-

terial. Which objection was overruled by the court, to which ruling defendant excepted and an exception allowed.

Witness answered:

"A. I don't just remember what I did say to her. It has been a long while ago and you have my statement there directly after that. Very probably near the facts of the case but I don't remember. I can't remember just what I did say. But anyhow I did say that as I understood it, that they had no occasion to go on the land at all according as I understood the law as interpreted to me, and that they would receive so much for their right by filing upon the land.

Q. They would receive how much?

A. Well, I think you read there $150. I don't know.

Q. Who was to pay them that money?

A. Potter and Jones, the same as the others."

While the same witness was on the stand, plaintiff's counsel offered in evidence a certified copy of the record showing the patent issued to Esther P. Collins, the soldier's widow. Which offer was objected to by counsel for defendant as incompetent, irrelevant and immaterial.

The court thereupon stated:

"I don't think that patent has anything to do with this case. It doesn't show intent or purpose or anything else. The application is the only thing

that might show what intent or purpose was manifested by the defendant."

Mr. Goldstein: We have the application here.

Mr. Hall: There was no claim as I understand it, that Jones ever got this land. It went to patent.

Court: You may have the application, but I don't think the patent has anything to do with it.

Mr. Goldstein: I would like to offer his evidence as proof witness to the proof of Esther P. Collins.

Court: You may do that.

Counsel for defendant made the following objection:

Mr. Hall: I make the same objection to that, as incompetent, irrelevant and immaterial. It doesn't appear that Mr. Jones ever acquired title to this land in question, and it doesn't tend to prove—any testimony of witnesses other than Mr. Jones doesn't tend to prove any intent on the part of Mr. Jones.

Which objection was overruled by the court, to which ruling defendant excepted and exception allowed.

The court then stated:

"I do not think that the whole record should go to the jury. You may put in the homestead proof and the application. I do not think you can go further than that."

Thereupon, the application of Esther P. Collins and her homestead proof were received in evidence and marked "Government's Exhibit 9." Which

homestead proof was on Government Form 4-369, and was the testimony of John L. Wells as a witness in support of the homestead entry of Esther P. Collins, to Homestead Entry No. 12946, wherein, among other things, Wells testified that he was acquainted with the applicant; that she did not reside upon the land but had it cultivated; that she was absent from the land all of the while; that about one acre was cleared and raised crop one season; two or three miles of good trail, small orchard, valued at $200 or $250. Which proof was subscribed and sworn to by said J. L. Wells before Charles B. Moores, Register of the United States Land Office at Oregon City.

While the same witness was on the stand, counsel for plaintiff made the following offer:

"I offer in evidence the testimony of John L. Wells as proof witness to the final proof made by Franklin Hummel, George West, George Rilea, Nelson B. Smith, and Henry Marble, old soldiers whom the witness has already testified to as being included among the number of others that he induced to enter into contracts in pursuance of this general plan and scheme."

To which offer counsel for defendant objected as being incompetent, irrelevant and immaterial. Which objection was overruled by the court, to which ruling counsel for defendant duly excepted and exception allowed by the court.

Said documents so offered were received in evidence and marked "Government's Exhibits 10, 11, 12, 13 and 14" (page 51 of testimony).

Exhibit "10" being on Blank 4-369, homestead proof and testimony of witness John L. Wells, on the homestead entry of Henry Marble, wherein the said Wells testified as to the settlement, residence, cultivation of the said entryman, and that it had been his home continuously since establishing his actual residence; that he had been temporarily absent about one-half the time, at work, but not longer; and other testimony contained therein. Which said homestead proof was subscribed and sworn to by the said John L. Wells before George W. Bibee, Receiver of the United States Land Office at Oregon City.

Exhibit "11" being on Government Blank 4-369, testimony of John L. Wells to the homestead proof of Nelson B. Smith, wherein the said Wells testified that he knew the said Nelson B. Smith; that he knew that he settled on the land about October 1, 1900, and established a residence the same date; that he had been temporarily absent not to exceed 60 days at one time and this for the purpose of earning a living; that he had raised crops one season thereon; and answered other questions. Which said homestead proof was subscribed and sworn to by said John L. Wells before Charles B. Moores, Register of the United States Land Office at Oregon City.

Exhibit "12" being the testimony of John L. Wells to homestead proof of George Rilea, on Government Form 4-369, wherein the said Wells testified that he knew the said Rilea and that the claimant established his actual residence about September 26, 1900, and that he had only been temporarily absent for not to exceed 30 days for the purpose of earning a living; that he had raised crops, built a house and cleared one acre of ground; and answered other questions therein required. Which homestead proof was subscribed and sworn to by said John L. Wells before William Galloway, Receiver of the United States Land Office at Oregon City.

Exhibit "13," being homestead proof and affidavit of John L. Wells on Government Form 4-369, to the homestead proof of George West, wherein the said Wells testified that he was acquainted with George West; that he established his residence on the land in February, 1901, or thereabouts; that he had made it his home continuously since establishing his residence thereon; that he had been absent occasionally three or four months at a time for the purpose of making a living; and answered other questions therein. Which homestead proof was subscribed and sworn to by said Wells before William Galloway, Receiver of the United States Land Office at Oregon City.

Exhibit "14," being the testimony of John L.

Wells on homestead proof of Franklin Hummel, on Government Form 4-369, which was subscribed and sworn to by said John L. Wells before Charles B. Moores, Receiver of the United States Land Office at Oregon City.

Oliver I. Conner, a witness called in behalf of plaintiff (page 82 of testimony), testified that at the solicitation of Wells he went to see defendant Jones in the Worcester building, Portland, Oregon, signed up a contract with him, whereby Jones was to locate him on the land in the Siletz Indian Reservation; that he did file upon a tract of land designated by Mr. Jones on said Reservation.

Attorney for plaintiff made the following offer (page 93 of testimony):

> "I offer in evidence certified record of the proof and patent issued to witness Conner, as one of the nine entrymen mentioned in the complaint."

Which offer was objected to by counsel for defendant as incompetent and immaterial "for the reason that the Conner claim is not one of the claims that appear now to have been deeded to Jones."

"Court: You say the Conner claim is not one of the nine claims?

Mr. Hall: It is one of the nine claims, but Mr. Jones never got the claim.

Court: I will overrule the objection."

To which ruling counsel for defendant duly excepted and exception allowed.

The document was then received in evidence by the court and market "Government's Exhibit 15," which said exhibit was a certified record of the duplicate Receiver's receipt No. 1316 to Oliver I. Conner; certificate as to posting of notice by Charles B. Moores, Register; notice of intent to make final proof by Conner; certificate of publication by the publisher of the "Lincoln County Leader"; non-mineral affidavit of Conner taken before William Galloway, Receiver; a certificate of service in the Army of the United States, of Oliver I. Conner, signed by William Clinton, Major of 13th U. S. Infantry; the homestead proof and testimony of witness Richard D. Depue on behalf of claimant Conner; the testimony of witness Joseph Gillis on behalf of Conner; testimony of Oliver I. Conner in his own behalf; final receipt issued to Oliver I. Conner by William Galloway, Receiver of the Land Office; two affidavits of Oliver I. Conner in regard to his transactions with W. N. Jones and Thad S. Potter; duplicate Receiver's receipt No. 13116 issued by the Department of the Interior to Oliver I. Conner, signed by William Galloway, Receiver; affidavit of Oliver I. Conner, of his service in the United States Army; non-mineral affidavit of Conner, sworn to before J. H. Lutz, County Clerk of Lincoln County; homestead affidavit of Oliver I. Conner sworn to before J. H. Lutz, County Clerk of

Lincoln County; application for homestead of Oliver I. Conner; final certificate No. 6442 issued by Charles B. Moores to Oliver I. Conner.

Mrs. Martha Miller, called by plaintiff as a witness (page 176 of testimony), testified that she lived in Portland; had lived there continuously for about 25 years; that she was the widow of a soldier who died April 27, 1893; that she knew John L. Wells, an old soldier, slightly; and the following question was propounded to witness by counsel for plaintiff:

"Q. Did he (meaning Wells) ever call upon you at any time with reference to filing upon some Siletz land?"

To which question counsel for defendant interposed an objection on the ground that its admission was irrelevant and immaterial, which objection was overruled by the court, to which ruling counsel for defendant duly excepted and exception allowed.

Witness thereupon answered:

"A. He did."

Witness further testified:

"That she thinks that some time in 1900 that Mr. Wells told her that there was a ruling now under which a soldier's widow might procure a homestead without a residence upon it, and that there was—I don't remember whether he said a company or not. I can't remember as to that. But

there was someone who proposed to finance widows; in other words, to make the improvements for them and when the proofs were made—final proof—I think that is the way it was—they were to be given a mortgage; I think that these people that financed it were to be given a mortgage. Gentlemen, remember this has been years ago and I had no idea of having to recite it or I would have kept it maybe a little straighter in my memory. But they were—whoever this was was to finance it; there was no names given me; but there was somebody that proposed to finance it, and when the improvements were done the homesteader was to give a mortgage to that party to secure them for the outlay of money for improvements. Well, I gave it a little thought, of course, but I was not prepared to do anything of myself. So it went on—I couldn't tell you how long—but finally someone—I don't think it was Mr. Wells; I don't think he came to see me; if he did I don't remember; but some way I was asked to go to Mr. Potter's office, which I did. And he talked to me about it. I can't remember what was said, only I do remember this: I said, 'You are an attorney, Mr. Potter?' And he said, 'I am.' I said 'Is this all straight business?' He gave me the contract and I read it. He said, 'It is.' 'Well,' I said, 'of course I know that I have a homestead right, and I want that right, but I don't want anything that is not right.' And he said, 'It is all legitimate, Mrs. Miller. If it wasn't I wouldn't be dabbling

with it myself.' Well, then, I cannot tell you when it was, or how long, or anything about what time elapsed; but some way I went to Mr. Potter's office —I suppose he knew about me likely; I cannot say positively as to that; but I know I went to his office, and I met there a Mrs. Bushong and a Mrs. Collins, if I remember the names correctly, and we went to Oregon City and made a filing. Mr. Potter paid my fare.

Q. Who paid the expenses of filing in Oregon City?

A. I guess he did. I never had anything to do —I was not to have anything to do with the expenses.

Q. Did you ever see the land?

A. I did not.

Q. Who furnished you the description of the land?

A. I guess Mr. Potter did. I know he gave me the numbers of it for I asked him."

Plaintiff called as a witness Louis Paquet (page 194 of testimony), who, being sworn, testified that he had lived in Portland about 66 years; that outside of Oregon City and Portland he had not lived any other place except temporarily; that in the years of 1901 and 1902 he lived in Portland and was a contractor, steamboat builder; that he had served in the War of the Rebellion. The following question was propounded to witness by counsel for plaintiff:

"Q. Did anyone speak to you with reference to taking up some homestead claim in the Siletz Reservation?"

To which question counsel for defendant objected on the ground that the same was irrelevant and immaterial—and on the ground that the witness was not one of the nine persons that it was alleged in the complaint took claims. Which objection was overruled by the court, to which ruling counsel for defendant duly excepted and exception allowed.

Witness thereupon answered:

"A. Yes, sir."

Over the objection of defendant, witness was required to and did testify in effect that he had a conversation with J. L. Wells herein referred to, in regard to taking up a homestead in the Siletz Indian Reservation, and that Wells told him he was entitled to take a homestead, and that he signed a contract in Wells' office on the East Side, and that in pursuance thereof he went down to the Siletz Indian Reservation and looked at the land, and that after looking at the land he filed a homestead claim on the same at Oregon City; that his expenses and filing fees were paid he thought by Mr. Potter; that he didn't go back to the land for a year on account of being out of the state; that he never lived on the place, slept on it one night; that after final proof he went to defendant Jones to sell him his claim; that he asked Jones

$240.00 and Jones finally offered him $220.00, which he took, but that no patent was ever issued for the land.

Thereupon, counsel for plaintiff made the following offer (page 203 of testimony):

> "I offer in evidence the contract signed by witness Louis Paquet with respect to this particular land. The same form of contract as the others."

To which offer counsel for defendant objected as being incompetent and immaterial, which objection was overruled by the court, to which ruling counsel for defendant excepted and exception allowed.

Said contract was then admitted in evidence by the court and marked "Government's Exhibit Numbered 22 and 23."

Said Exhibit Numbered "22" being a blank form of a contract in the first portion thereof and signed by Louis Paquet, and being in substance the same form of contract as set out in plaintiff's complaint; and said Exhibit Numbered "23" being the homestead proof of Louis Paquet, Form No. 4-369, in which he testified that he built a house and established a residence upon the land, which land was situated in the Siletz Reservation; that he had made continuous residence, but had been temporarily absent and at work and at one time was away about 6 months and could not get back; that he had cultivated about one or one and one-half

acres of land and raised two crops. And attached thereto is the testimony of W. T. Everson on behalf of said claimant, Louis Paquet, which was subscribed to before George W. Bybee, Receiver; and there was also attached to same paper the final affidavit required of homestead claimants, subscribed and sworn to before the same officer.

Mr. M. J. Morse was called as witness on behalf of plaintiff (page 213 of testimony), who, being sworn, testified that he had lived in Portland, Oregon, continuously for about 48 years; had not made his home elsewhere; that in 1900 and 1902 he was working for Sanborn, Vail & Company, Portland, that he was a veteran of the War of the Rebellion.

Counsel for plaintiff propounded the following question to witness:

"Q. Did you file any entry for some land in the Siletz Reservation?"

To which question counsel for defendant objected on the ground that the same was incompetent and immaterial, and the further objection that this witness was not one of the nine homesteaders covering the lands here in controversy.

Which objection was overruled by the court, to which ruling counsel for defendant excepted and exception allowed:

Witness then answered:

"A. I did."

Counsel for plaintiff further interrogated the witness as follows:

"Q. At whose request?

Mr. Hall: I would like our objection to go to all the testimony of this witness without interruption.

Court: Very well, let it be understood.

Mr. Hall: It may be deemed that our exception will be allowed to it?

Court: Yes."

Witness then answered:

"A. Mr. Wells, I think."

Witness then, over the objection of defendant, was permitted to testify in detail: That he received a copy of the contract from Mr. J. L. Wells, which he signed in Mr. Wells' office, and that he went to Oregon City and made a filing upon the land; and that the contract was the same kind of contract in tenor and effect as the other contracts; that he made homestead proof on the land but that no patent was ever issued.

Plaintiff then called as witnesses George Rilea, G. C. Lawrence, Daniel Clark, George West and Frank Hummel, all old soldiers, who testified substantially as had Louis Paquet and M. J. Morse—that they had been solicited by J. L. Wells to take up homesteads in the Siletz Indian Reservation, and that they had each entered into the same kind of contract with Jones as had the other homestead-

ers; that they had all made final proof, but that patents had not issued to them for their lands, and that they never obtained title. All of which testimony was admitted over the objection of defendant and exceptions allowed. And the homestead proof of each of said witnesses was, over the objection of defendant, admitted in evidence and marked as exhibits, and to which defendant was allowed an exception.

Mr. Robert A. Miller, called as a witness (page 354 of testimony), testified that he had lived in Portland about 15 years; that he was a lawyer by profession, and was at present a practicing lawyer. That he represented a client by the name of Moulton in a contest at the Oregon City Land Office. And the following question (page 355 of testimony) was propounded by counsel for plaintiff to witness:

"Q. Just tell the court and jury the negotiations you had with Mr. Jones concerning these contests."

Whereupon, counsel for defendant objected to same as being incompetent, unless it pertained to the nine claims in issue, or some of them.

"Court: Whose claim is that?

Mr. Goldstein: All of these claims were entered upon in pursuance of this general agreement, particularly the claim of Morse, who testified, Menzo J. Morse, who testified, Daniel Clark, G. C. Law-

rence, who testified, and Louis Paquet and Franklin Hummel, who testified.

Court: These are not the claims.

Mr. Goldstein: Not the nine claims, but these are the claims of the witnesses who testified in pursuance to the ruling of the court.

Court: This has no relation to the contract which was entered into?

Mr. Goldstein: No, except merely to show the intent on the part of Mr. Jones with respect to disposing of any of the contests filed against claims that he induced to be filed in pursuance of the same general arrangement and scheme whereby the nine original entries were filed upon. These claims did not get to patent. That was the reason the claims did not include those. But I think we would be entitled to show any negotiations and understanding he had with Mr. Jones concerning the very same general scheme and understanding whereby these claims were filed.

Court: That is not charged as part of the scheme.

Mr. Goldstein: He is charged with fraud and deceit in inducing a lot of entrymen to file on these lands, not only the nine, but other persons, with intent and purpose.

Mr. Hall: If your Honor please, the only reason this evidence, any of it, has been admitted, as I understand, is upon the theory that it might possibly show an intent by the commission of like

acts at or near the same time; but to follow that on through after final proof, and then to determine what was done after that in regard to claims that the testimony shows were relinquished back to the Government, and on which the Government lost no money, or lost no land, doesn't seem to me to tend to throw any light upon the question here at issue, as to whether or not Jones defrauded the Government out of the nine claims that are here at issue. There are only nine. They are not claiming anything for these other claims. This is getting too far away. It is getting into a mass of testimony that is liable to befog the minds of the jurors and to give them the impression that the Government was in some way defrauded in regard to these other claims that are not in issue, claims that the Government did not lose.

Court: What is the question?

Mr. Goldstein: The question I asked him was as to what conversation he had with Mr. Jones concerning the settlement or compromise of these contests that were made by him as attorney for certain contestants against the very claims about which witnesses have testified as having filed in pursuance to the general understanding and agreement had with Mr. Jones.

Court: I will overrule the objection for the present and see what develops.

Mr. Hall: We save an exception.

Court: An exception allowed."

To which question witness answered:

"A. While these contests were pending, as I remember, I met Mr. Jones in the hallway near the Land Office one day, and he jumped on me pretty severely for taking part in the contests, as I remember; and as the result of it, I think he made an offer of compromising the cases, with the statement that, I think, some of his clients or somebody had loaned some money on these claims and he had to protect them by seeing that the claims went to patent. And I think he offered $200.00 to compromise each claim. That was to cover the expenses of—

Court: $200.00 apiece to your clients?

A. Yes.

Court: You didn't take it?

A. How?

Court: You wouldn't take it?

A. No; I put it up to my clients and I think they—

Court: They rejected it?

A. No, they took it."

Mr. Malcolm Dobie, called as a witness (page 430 of testimony), testified that he was a timber cruiser, had been such for about 45 years, and for about 30 years of which on the Pacific Coast; that he had at one time cruised timber in the Siletz country in Twps. 8 South, 8 West, and 8 South, 9 West. And the following question was propounded

to him by counsel for plaintiff:

"Q. Are you familiar with what timber buys and sells for in the Siletz Reservation?

A. No, sir; I never was down there.

Q. You know the value of the timber in 1900 and 1902?

A. I know what the company paid for timber at that time.

Q. Where?

A. In 8-8 and 8-9 (meaning 8 S., R. 8 W., and Twp. 8 S., R. 9 W.) at the head of the Siletz.

Q. (Page 431 of testimony) The land here is in Twp. 10?

A. I never was in 10.

Q. The lands in 8 and 9 were practically alike, were they, that is, the timber?

A. Well, I couldn't tell you because I never was in 10.

Q. Well, what did land sell for in Twp. 8 and 9?

Mr. Hall: At what time?

Q. In 1900 to 1902.

A. About 20 cents a thousand.

Q. You mean it was sold or bought?

A. Bought.

Q. Yes. That was a pretty conservative estimate in the buying?

A. Yes, sir.

Q. What was it sold at?"

Question objected to by counsel for defendant as incompetent and immaterial.

"Mr. Goldstein: I think he can testify as to the general reputation.

Court: He can testify to that.

Mr. Hall: As to what he saw in the newspapers?

Court: If he saw a report of the sale in the newspapers."

To which ruling counsel for defendant duly excepted and an exception allowed.

Witness answered:

"A. About 20 cents.

Mr. Hall: If the court please, we want to get it limited to this particular locality in the Siletz Indian Reservation.

Mr. Goldstein: Well, that is what we are talking about. He is talking about Twps. 8 and 9, and this is in Twp. 10. I don't know how much nearer I can get to it. Of course nothing was sold in Twp. 10.

Court: I think that is getting close enough to it."

To which ruling counsel for defendant duly excepted, to the admission of this character of testimony, and an exception allowed by the court.

The following questions were then propounded to witness:

"Q. As I understand, your company bought

the timber there at that time for 20 cents a thousand?

A. Yes, sir.

Q. And what was it selling for by that company?

A. I couldn't tell you.

Q. From what you read?"

Objected to as incompetent and hearsay; which objection was overruled by the court, to which ruling counsel for defendant duly excepted and an exception allowed.

Witness answered:

"A. All I know is what we bought. I couldn't tell the selling.

Q. You know what it was sold for?

A. In 1907?

Court: In 1907?

A. Yes."

This testimony was objected to by counsel for defendant.

"Court: You don't know what it sold for in 1902?

A. No, sir.

Q. Would the company that you represented sell it in 1902 for 20 cents, that you paid for it?"

Which question was objected to by counsel for defendant, objection overruled by the court and an exception allowed.

Witness thereupon answered:

"A. No, sir."

Mr. David Edgar, called as a witness (page 439 of testimony), testified that he lived about 20 miles from Portland; had lived in the vicinity of Portland since 1901 and prior to that in Alaska; had been a timber cruiser for about 30 years, doing cruising out of Portland in the States of Oregon, California and Washington; that he had cruised lands in Lincoln County, Oregon, in the fall of 1901 and 1902; that he had cruised Townships 8-8 and 8-9 (meaning Twps. 8 S., R. 8 W., and 8 S., R. 9 W.); that he was acquainted with the kind and quality of timber in those townships at that time. The following question was propounded by counsel for plaintiff (page 440 of testimony):

"Q. Are you acquainted with what the timber was buying for at that time?"

To which question counsel for defendant objected as being incompetent and immaterial, and not shown to be in the vicinity of the land in question. Which objection was overruled by the court, to which ruling counsel for defendant saved an exception and exception allowed.

Witness was then permitted, over the objection of defendant, to testify as follows:

"Q. What was the timber buying for at that time in that location?

A. Well, it bought for about—the lowest was $1000 for any claim that I know of.

Q. You mean $1000 for a quarter section?

A. For a quarter section.

Q. For 160 acres?

A. Yes. And the highest—the highest claim I know of sold for $3500.00. That was later on, you know; some time after that.

Q. What did claims buy for in 1902? What was the lowest?

A. I heard of some being sold there for $1000.00.

Q. And what did it range up to? Did it go up?

A. It went up from there; about $2500.00 was the highest then, I think.

Q. What was the average claim there?

A. I don't think it was over $1500.00—$1600.00.

Q. $1600.00 a claim?

A. I don't think it was over that.

Q. Now do you know what the price of timber, the buying of timber would run?

A. No, I don't.

Q. Stumpage?

A. No, I don't know.

Q. The price per thousand, do you know?

A. Oh, I couldn't tell you, you know. There was no—

Q. What was it buying for at that time, do you know?

A. I didn't know of any being sold at that time."

Mr. W. H. Stennick, called as a witness on behalf of plaintiff (page 449 of testimony), testified

that he had lived in Portland most of the time since 1900; that his business was a timber estimater or cruiser; that he had cruised timber in Lincoln County first in 1902 and up to about 1912.

The following question was propounded by counsel for plaintiff (page 450):

"Q. Did you ever cruise any timber on the Siletz Reservation?

A. Yes, sir.

Q. Are you acquainted with the quality and kind of timber growing on the claims in the Siletz Reservation?

A. Yes, sir.

Q. What would you say as to what timber was buying and selling for in about 1902 in that locality?

A. I couldn't answer that question.

Court: Did you say you couldn't answer that question?

A. Yes, sir.

Q. Were'nt you cruising timber about that time?

A. Some; yes, sir.

Q. In 1902?

A. Yes, sir; but I was not buying or selling.

Q. Well, do you know what it was being bought and sold for?

A. Just from hearsay.

Q. Well, that is all we ask you. We didn't ex-

pect you to be buying. What was it buying and selling for in 1902?"

Question was objected to as incompetent and immaterial. Which objection was overruled by the court, to which ruling counsel for defendant excepted and an exception allowed.

"Court: He answered about $1000 a claim, from what he heard. Do you object to that question?

Mr. Hall: I object to his testifying unless he located it at or near where these lands are.

Court: He says it is on the Siletz Reservation.

Mr. Hall: The Siletz Reservation is a large body of land, your Honor.

Q. Do you remember what townships you cruised in?

A. In 1902 I was in 8-9 (meaning Twp. 8 S., R. 9 W.).

Mr. Goldstein: That is close enough.

Q. Do you know what it was buying or selling for per thousand feet?

A. No, sir.

Q. You just merely stated it was about an average of a thousand dollars per claim?

A. Yes, sir.

Q. Is that irrespective of stumpage?

A. I think so.

Q. How much stumpage would be on a $1000 claim, in average?

A. I couldn't answer that question."

Plaintiff called as a witness R. H. Howell (page 453 of testimony), who testified that he lived at Toledo, Oregon; that he had been County Clerk of said county for 8 years; had lived in Lincoln County ever since it was a county and it was created in 1893; that he had been over the Siletz Indian Reservation and knew the geography of the country fairly well; he had never been in the hills but had been up and down the river.

The following question was propounded by counsel for plaintiff:

"Q. Do you know what the timber land in the Siletz Reservation was being bought and sold for in 1902?

A. Well, it would only be hearsay.

Q. Well, that is all we ask for.

A. Yes.

Q. Now, what was a claim of 160 acres, a quarter section, of timber land on the Siletz Reservation being bought and sold for in 1902?"

Which question was objected to by counsel for defendant as incompetent and hearsay. Which objection was overruled by the court, to which ruling counsel for defendant excepted and an exception allowed.

Witness thereupon answered:

"A. Anything up to about $1000 or $1200.

Court: A claim?

A. Yes, sir.

Court: 160 acres?

A. Yes, sir."

At the close of all of plaintiff's testimony in chief, and after plaintiff had rested its case, defendant, by its counsel, moved the court for a judgment of nonsuit for the reason that plaintiff had failed to prove such a case as is entitled to take the case to the jury, which motion was by the court overruled, to which ruling counsel for defendant excepted, and an exception allowed.

At the close of all of the testimony given in the case, and after plaintiff and defendant had each rested, the defendant by his counsel moved the court for an order directing the jury to return a verdict in favor of the defendant, which motion was overruled by the court, to which ruling counsel for defendant duly excepted and an exception allowed by the court.

Prior to the first argument to the jury, counsel for defendant requested the court in writing to give to the jury the following instruction hereinafter set forth:

"The complaint charges in effect that defendant Jones, with a view and intention of acquiring title in himself to the lands here in question, caused the same to be cruised, and, designing and intending to deceive the officers of the United States and cheat it out of the

title of said lands, caused the nine persons named in the complaint to make false and fraudulent homestead entries on the nine homesteads described in the complaint, and that it was not intended by Jones that any of said entrymen should establish a residence or reside upon their respective claims; that it was designed and intended by Jones that each of said entrymen should falsely make proof before the land officers of the United States that, during the life of said homestead entries they had complied with the law in regard to residence, improvement and cultivation; and it is alleged that such false and fraudulent proof was made before the land officers at Oregon City, and that based thereon the said officers issued final receipts to said entrymen.

In order to recover in this case, it is incumbent upon the part of the Government to prove to your satisfaction by a preponderance of the evidence, that Jones intended to gain title to these land in himself or others associated with him (except the homesteaders), and unless such intent is proven to your satisfaction by a preponderance of the evidence, then the case of the Government fails and your verdict should be for the defendant."

Which instruction so requested was refused by the court, to which refusal counsel for defendant duly excepted and an exception allowed.

Defendant also requested the following instruction:

"If you find that defendant Jones, prior to the issuance of final receipts to these nine entrymen by the United States Land Office at Oregon City, had no intent to gain title in himself, or for his benefit, in these lands, then it is immaterial whether or not defendant knew or believed that the entrymen had complied with the laws of the United States in regard to settlement, residence and cultivation of their respective claims."

Which instruction so requested was refused by the court, to which refusal counsel for defendant excepted and exception allowed.

Defendant also requested the following instruction:

"I instruct you that the Register and Receiver of the United States Land Office had no lawful right or authority to accept the final proofs of any of these nine entrymen, for the reason that it is apparent on the face of each of the final proofs made by each of the nine homestead claimants, that none of the homestead claimants had complied with the laws of the United States so as to entitle any of them to a final receipt or a patent. By this I mean that the Act of Congress passed in 1894, opening the Siletz Indian Reservation for home-

stead entry and settlement, required three years' actual residence upon, and cultivation of the land, and did not permit the deduction of time of service of soldiers in the Civil War; whereas, the proofs offered by the homestead claimants and accepted by the Register and Receiver show a residence in each case of not to exceed 1½ years.

The Government has not introduced any testimony tending to show that the land officials were misled by the proof of residence submitted by the entrymen. Therefore, in the absence of any showing that the Land Department was misled by the proof submitted and by reason of the fact that the proof submitted did not show a residence which complied with the law, I instruct you to return a verdict for the defendant."

Which instruction was refused by the court, to which refusal counsel for defendant excepted and an exception allowed.

Defendant also requested the following instruction:

"I further instruct you as a matter of law, that the officers of the United States Land Office could not have been deceived and misled by these proofs, for the reason that if every statement of the homestead claimant therein contained had been literally true, that none of

said final proofs showed a compliance by the homestead entrymen with the laws of the United States, and were not entitled to final certificates or to patents upon such proofs."

Which instruction was refused by the court, to which refusal counsel for defendant duly excepted and exception allowed.

Defendant also requested the following instruction:

"If, under the testimony, you are convinced that the plaintiff in this action is entitled to recover, I instruct you that the measure of damages which plaintiff will be entitled to recover from defendant would be the market value of such of these nine claims as you may find that the Government is entitled to recover, at the time of the issuance of the final certificate by the land officers of the United States; that is, such price as the land would, at that time, have brought in open market offered by a seller who was not obliged to sell, to a buyer who was not obliged to buy; and in arriving at this conclusion, you may take into consideration the location of the lands, their quality and their accessibility to roads, railways, or other means of transportation, and from all the legitimate facts before you, determine what the reasonable value of these lands was at the time that the Government parted with its title."

Which instruction was refused by the court, to which refusal counsel for defendant excepted and exception allowed.

Defendant also requested the following instruction:

"It has been contended by the Government that Potter notified certain entrymen when they should visit their claims. I charge you that there is nothing illegal in this connection. It is admitted that Jones had agreed, if the entrymen desired him to do so, that he would advance the expenses incidental to each entry up to $60.00, and I have charged you that such agreement was legal."

Which instruction so requested was refused by the court, to which refusal counsel for defendant excepted and an exception allowed.

Defendant also requested the following instruction:

"It is in evidence in this case that the lands in question are heavily timbered and not by nature agricultural in character except after the timber has been removed; however, the Government of the United States, with knowledge of the character of these lands, made provision for their disposition under a homestead settlement, and in no other way, and it must be presumed that in passing a law for the disposition of these lands under homestead set-

tlement the Government of the United States expected only such settlement, residence, use and cultivation as could reasonably be afforded under the circumstances."

Which instruction so requested was refused by the court, to which refusal counsel for defendant excepted and an exception allowed.

Defendant also requested the following instruction:

"In all the final proofs offered and admitted as evidence in this case, the 5th question is as follows:

'Of whom does your family consist; and have you and your family resided continuously on the land since first establishing residence thereon (if unmarried state that fact)?'

This question was asked of and answered by each claimant. In the proofs of the soldiers' widows, each answered in substance that the claimant had not resided on the land.

I charge you that the law did not and does not require residence of a widow of a veteran of the Union Army during the Civil War. In the proofs submitted by the soldiers, many, and perhaps all, show that the claimants answered in substance either, 'That has been my residence,' or, 'I have made continuous residence on the land,' or other similar statements. In connection with these proofs, I charge you that this question is ambiguous. The words

'resided continuously on the land' do not mean actually being on the land continuously, but they mean 'Has the entryman resided on the land such part of the time as did not permit an absence of sufficient length of time as to interrupt the continuous residence?' An absence without a sufficient excuse for more than six months is held to be an abandonment of the homestead and will work a forfeiture."

Which instruction so requested was refused by the court, to which refusal counsel for defendant excepted and exception allowed.

Defendant also requested the following instruction:

"Intent is vital in this cause. If the nine entrymen who filed on the nine claims in question honestly believed they knew what were the requirements of the homestead law and if these entrymen acquired what they believed to be correct information as to the requirements of the homestead law prior to meeting Jones or entering into the plan complained of, or secured such information independent of Jones, then if these entrymen honestly believed they were complying with the law, then Jones cannot be held responsible for an act of these entrymen based upon a mistaken idea of the law.

If Jones should have honestly given a mistaken interpretation of the law, he could not

be held responsible because the wrongful intent would be absent."

Which instruction so requested was refused by the court, to which refusal counsel for defendant duly excepted and exception allowed.

The court, on its own motion, instructed the jury as follows:

"I will now instruct you touching the measure of damages in the event that you find for the plaintiff. If, under the testimony, you are convinced that the plaintiff in this action is entitled to recover, I instruct you that the measure of damages which plaintiff will be entitled to recover from defendant would be the market value of such of these nine claims as you may find that the Government is entitled to recover, at the time of the issuance of the final certificates by the land officers of the United States; that is, such price as the lands would at that time have brought in open market, offered by a seller who was not obliged to sell, to a buyer who was not obliged to buy, with legal interest at the rate of 6 per cent per annum from that date to this. And in arriving at this conclusion, you may take into consideration the location of the lands, their quality, and their accessibility to roads, railways, or other means of transportation, and from all the legitimate facts before you, deter-

mine what the reasonable value of these lands was at the time that the Government parted with its title. You will bear in mind the testimony adduced on this subject."

To that part of the instruction wherein the jury was directed to add legal interest at the rate of 6 per cent, counsel for defendant excepted and exception allowed by the court.

All of the testimony adduced on the trial of said cause and transcribed by the Court Reporter, together with all exhibits admitted in evidence, being Plaintiff's Exhibits Nos. 1 to 32, inclusive, and Defendant's Exhibits Lettered "A" to "B," inclusive, and the depositions of witnesses, constituting all of the testimony given in the case, are herewith attached to the Bill of Exceptions and made a part hereof.

District of Oregon—ss.

I, C. E. Wolverton, District Judge of the District Court of the United States, for the District of Oregon, hereby certify that the foregoing Bill of Exceptions is hereby settled and allowed this 10th day of March, 1919, and that the same contains a full and true transcript of all of the testimony produced in said case on behalf of both plaintiff and defendant, and all exhibits introduced in evidence, and the depositions of witnesses.

C. E. WOLVERTON,
District Judge.

And thereafter the defendant duly served and filed his Assignment of Errors as follows:

(Omit Title.)

Comes now Willard N. Jones, the defendant in the above entitled cause, appearing by John H. Hall and Jay C. Bowerman, his attorneys, and in connection with his petition for Writ of Error from the judgment made and entered in said cause in this court on the 12th day of December, 1918, files this, his Assignment of Errors, upon which he intends to rely in the prosecution of said Writ of Error:

I.

The court erred in overruling defendant's objection to the taking of any evidence in this cause by the court, for the reason that the allegations contained in complainant's complaint and the admissions and allegations contained in complainant's reply do not show that the Government has any cause of action against the defendant, but do show affirmatively that the complainant was not misled or deceived into accepting final proofs and issuing patents to the nine entrymen named in complainant's complaint as being the entrymen whom defendant caused to file upon the lands described in complainant's complaint.

II.

The court erred in admitting in evidence the homestead proof of Edward C. Brigham and the sworn testimony of witness John L. Wells to the

homestead entry of Edward C. Brigham, on Homestead Entry No. 13137, being Governmet Form 4-369; in the admission in evidence of homestead proof and testimony of said witness John L. Wells, on Government Form 4-369, to the homestead entry of Richard Depue; also in the admission in evidence of homestead proof and testimony of witness John L. Wells on the same blank and form in support of the homestead entry of Benjamin S. Hunter; which said three entrymen were of the nine homestead entrymen described in complainant's complaint, and claimed by complainant to have been persons whom defendant procured to fraudulently file homestead entries in the Siletz Indian Reservation and make proofs thereof before the land officers of the United States Land Office at Oregon City, Oregon; and the said testimony of the said John L. Wells being testimony taken in writing on the said forms before the Register and Receiver of said Land Office at the time fixed and appointed for the final proof of said entrymen; for the reason that said final proofs offered by said three entrymen and said testimony so given by witness John L. Wells, show conclusively and affirmatively that said homestead entrymen had not resided upon or cultivated said lands for the periods of time required by law, and that upon the face of said proofs so offered, that none of said entrymen were entitled to a final certificate or patent; which said

documents were received in evidence and marked "Government's Exhibits No. 4, 5 and 6."

III.

The court erred in permitting witness John L. Wells, while on the stand in said cause, to answer the following question:

"Q. Did you also secure filings for soldiers' widows?"

To which question witness answered that he did, but not on the same plan or scheme that was adopted with regard to filing on homesteads by the nine entrymen described in complainant's complaint. And in permitting the same witness to testify that said widows filed on lands within the Siletz Indian Reservation, but without settlement, and that he—the witness—was to receive $5.00 apiece for procuring soldiers' widows to file upon such land, which money was paid to him by a Mr. Potter and defendant Jones.

IV.

The court erred in admitting in evidence a paper that purported to be the form of contract to be entered into between soldiers' widows and one Thad S. Potter over the objection of counsel for defendant, and which document being a blank form of agreement to be entered into between blank, as party of the first part, and Thad S. Potter as party of the second part, and reciting that the party of the first part is entitled to the benefit of the Act of Congress of June 8, 1872, giving home-

steads to honorably discharged soldiers and sailors, their widows and orphan children, and that she desires to avail herself of the privilege, and that the party of the second part, in consideration of the covenants and agreements of the party of the first part, agrees to give the party of the first part information that will enable her to locate and file a homestead on 160 acres of public lands of the United States situate within the State of Oregon, and the party of the first part agrees to pay the party of the second part, as compensation for such information and his services to be performed in the preparation of papers, the sum of One Hundred Fifty ($150.00) Dollars; which paper was received in evidence and marked "Government's Exhibit 8."

V.

The court erred in permitting witness John L. Wells, while on the stand, to answer the following question:

"Q. Mr. Wells, was one of these soldiers' widows that you secured Esther P. Collins, do you remember?"

Which question witness answered in the affirmative, and further testified that he told her that she had no occasion to go on the land at all as he understood the law; that she would receive so much for her right for filing on the land.

VI.

The court erred in admitting the application of

Esther P. Collins filed in the Land Office at Oregon City, Oregon, and also the homestead proof of said Esther P. Collins, which said homestead proof was on Government Form 4-369 and was the testimony of witness John L. Wells as a witness in support of the homestead entry of Esther P. Collins to Homestead Entry No. 12946, wherein, among other things, Wells testified that he was acquainted with the applicant; that she did not reside upon the land but had it cultivated; that she was absent from the land all the while; that about one acre was cleared and raised one crop one season; that she had a small orchard valued at $200.00 or $250.00. Which proof was duly authenticated and sworn to, and which said application and homestead proof were received and marked "Government's Exhibit 9."

VII.

The court erred in admitting in evidence the testimony of John L. Wells as proof witness to the final proof made by Franklin Hummel, George West, George Rilea, Nelson B. Smith and Henry Marble, old soldiers whom the witness had already testified to as being included among a number of others he induced to enter into contracts with defendant Jones in pursuance of this general plan and scheme; which said persons so named were not any of the persons mentioned or described in complainant's complaint, and not persons to whom the United States of America had granted any patent or conveyance to any of said lands. And said docu-

ments were received and marked "Government's Exhibits No. 10, 11, 12, 13 and 14."

VIII.

The court erred in permitting witness Oliver I. Conner, called in behalf of complainant, to testify that at the solicitation of John L. Wells he went to see defendant Jones in the Worcester building, Portland, Oregon, and signed up a contract with him, whereby Jones was to locate him on land in the Siletz Indian Reservation, and that he did file upon a tract of land designated by Jones in said Siletz Indian Reservation; and in the admission by the court of certified record of proof and patent issued to witness Oliver I. Conner as one of the nine entrymen mentioned in complainant's bill of complaint; for the reason that the said homestead claim of Oliver I. Conner was not acquired by Jones and that the said Conner obtained patent to his land and conveyed it to a person other than defendant Jones. Which document so received in evidence was marked "Government's Exhibit 15," and being a certified record of the duplicate Receiver's receipt No. 1316 to Oliver I. Conner; certificate of posting; notice of intent to make final proof; certificate of publication; non-mineral affidavit; certificate of service in the Army of the United States of Oliver I. Conner; homestead proof and testimony of witness Richard D. Depue on behalf of claimant Conner; testimony of witness Joseph Gillis on behalf of Conner; testimony of

Oliver I. Conner on his own behalf; final receipt issued to Conner by the Receiver of the Land Office; two affidavits of Conner in regard to his transactions with defendant Jones and Thad S. Potter; duplicate Receiver's receipt 13116 issued by the Department of the Interior to Oliver I. Conner, signed by William Galloway, Receiver; affidavit of Oliver I. Conner of his service in the United States Army; homestead affidavit of Oliver I. Conner; application for homestead of Oliver I. Conner; final certificate No. 6442 issued by Charles B. Moores to Oliver I. Conner.

IX.

The court erred in admitting the testimony of witness Martha Miller called by complainant, a widow of a deceased soldier, and a person whom the said John L. Wells, acting on behalf of defendant Jones and one Thad S. Potter, had procured to file on a widow's homestead in the Siletz Indian Reservation about the year of 1900.

X.

The court erred in admitting the testimony of witness Louis Paquet, called and sworn on behalf of complainant, who was a soldier of the Civil War, and who, at the solicitation of John L. Wells acting for defendant Jones, had filed on a homestead in the Siletz Indian Reservation about the year of 1901, and who made final proof, but that no patent was ever issued to him to said lands.

XI.

The court erred in admitting in evidence the contract signed by witness Louis Paquet, with respect to the lands on which he had filed, and which contract was substantially the same as other contracts and substantially the same as the contract set forth in complainant's complaint, which contrict was admitted in evidence and marked "Government's Exhibits 22 and 23," Exhibit "23" being homestead proof of said Louis Paquet on Government Form No. 4-369.

XII.

The court erred in admitting the testimony of M. J. Morse, a witness called and sworn on behalf of complainant, who testified that he was an ex-soldier of the Civil War, and that at the solicitation of John L. Wells, acting for defendant Jones, he filed an entry for some land in the Siletz Indian Reservation in about the year of 1901; that he made final proof, but that no patent was ever issued by the Government to said land.

XIII.

The court erred in admitting the testimony of witnesses George Rilea, G. C. Lawrence, Daniel Clark, George West and Frank Hummel,, all ex-soldiers of the Civil War called and sworn on behalf of complainant, who testified substantially as had witness Louis Paquet and M. J. Morse, but that none of the land on which they had filed was

ever patented by the Government of the United States.

XIV.

The court erred in admitting the testimony of witness Robert A. Miller, called and sworn on behalf of the Government, a lawyer by profession, who testified that he represented a client by the name of Moulton in a contest at Oregon City Land Office, and who testified that he had compromised said contest with defendant Jones, but that said claims then in controversy were not one of the nine claims contained in complainant's complaint.

XV.

The court erred in admitting the testimony of Malcolm Dobie, called and sworn as a witness on behalf of complainant for the purpose of proving the value of the lands described in complainant's complaint, for the reason that said witness testified that he was not familiar with what timber bought and sold for in the Siletz Indian Reservation; that he had never been there; but that said witness was permitted to testify to the value of land outside the Reservation and a considerable distance from the land in question. For the reason that said witness was not qualified and had not sufficient knowledge to testify as to values and had never seen the lands described in complainant's complaint. And said witness was further permitted by the court to testify as to the value of timber from hearsay, and not from his own knowledge.

XVI.

The court erred in admitting the testimony of David Edgar, called and sworn as a witness on behalf of complainant for the purpose of proving the value of the lands described in complainant's complaint, and who testified that he had cruised other lands not in the immediate vicinity of the lands described in the complaint, and that the values fixed by him were from hearsay, and not from personal knowledge; that he did not know the price of timber in that vicinity, nor the price of stumpage, and therefore was not a competent witness to fix values.

XVII.

The court erred in admitting the testimony of W. H. Stennick called and sworn as a witness on behalf of complainant, who testified that he was a timber cruiser but did not know as to what timber was buying and selling for in the Siletz Indian Reservation or that locality in 1902; that he had not been buying or selling timber. He was permitted to testify from hearsay as to what land had been bought and sold for in that vicinity; that the lands that he had cruised were not the lands described in complainant's complaint. And said witness was not qualified to testify as to the value of the lands described in complainant's complaint.

XVIII.

The court erred in admitting the testimony of witness R. H. Howell called and sworn on behalf

of the complainant, who testified that he was the County Clerk of Lincoln County, Oregon; that he had been over the Siletz Indian Reservation and knew the geography of the country fairly well, had never been in the hills but had been up and down the river. Said witness was permitted by the court to testify as to what the timber land in the Siletz Indian Reservation was being bought and sold for in 1902 without any personal knowledge, but from hearsay only.

XIX.

The court erred in overruling defendant's motion for judgment on nonsuit at the close of complainant's case in chief, for the reason that complainant had failed to prove such a case as entitled the court to take the case to the jury, and that complainant had wholly failed to prove any case as against the defendant.

XX.

The court erred in overruling defendant's motion for directed verdict at the close of all of the testimony in the case and before argument, and after complainant and defendant had each rested, for the reason that the testimony adduced upon the trial was insufficient to warrant the court in submitting the case to the jury.

XXI.

The court erred in refusing to give the following instruction requested by counsel for defendant:

"The complaint charges in effect that de-

fendant Jones, with a view and intention of acquiring title in himself to the lands here in question, caused the same to be cruised, and, designing and intending to deceive the officers of the United States and cheat it out of the title of said lands, caused the nine persons named in the complaint to make false and fraudulent homestead entries on the nine homesteads described in the complaint, and that it was not intended by Jones that any of said entrymen should establish a residence or reside upon their respective claims; that it was designed and intended by Jones that each of said entrymen should falsely make proof before the land officers of the United States that, during the life of said homestead entries they had complied with the law in regard to residence, improvement and cultivation; and it is alleged that such false and fraudulent proof was made before the land officers at Oregon City, and that based thereon the said officers issued final receipts to said entrymen.

In order to recover in this case, it is incumbent upon the part of the Government to prove to your satisfaction by a preponderance of the evidence, that Jones intended to gain title to these lands in himself or others associated with him (except the homesteaders), and unless such intent is proven to your satisfaction by a preponderance of the evidence,

then the case of the Government fails and your verdict should be for the defendant."

XXII.

The court erred in refusing to give the following instruction requested by counsel for defendant:

"If you find that defendant Jones, prior to the issuance of final receipts to these nine entrymen by the United States Land Office at Oregon City, had no intent to gain title in himself, or for his benefit, in these lands, then it is immaterial whether or not defendant knew or believed that the entrymen had complied with the laws of the United States in regard to settlement, residence and cultivation of their respective claims."

XXIII.

The court erred in refusing to give the following instruction requested by counsel for defendant:

"I instruct you that the Register and Receiver of the United States Land Office had no lawful right or authority to accept the final proofs of any of these nine entrymen, for the reason that it is apparent on the face of each of the final proofs made by each of the nine homestead claimants, that none of the homestead claimants had complied with the laws of the United States so as to entitle any of them to a final receipt or a patent. By this I mean that the Act of Congress passed in 1894, opening the Siletz Indian Reservation for

homestead entry and settlement, required three years' actual residence upon, and cultivation of the land, and did not permit the deduction of time of service of soldiers in the Civil War; whereas, the proofs offered by the homestead claimants and accepted by the Register and Receiver show a residence in each case of not to exceed 1½ years.

The Government has not introduced any testimony tending to show that the land officials were misled by the proof of residence submitted by the entrymen. Therefore, in the absence of any showing that the Land Department was misled by the proof submitted and by reason of the fact that the proof submitted did not show a residence which complied with the law, I instruct you to return a verdict for the defendant."

XXIV.

The court erred in refusing to give the following instruction requested by counsel for defendant:

"I further instruct you as a matter of law that the officers of the United States Land Office could not have been deceived and misled by these proofs, for the reason that if every statement of the homestead claimant therein contained had been literally true, that none of said final proofs showed a compliance by the homestead entrymen with the laws of the

United States, and were not entitled to final certificates or to patents upon such proofs."

XXV.

The court erred in refusing to give the following instruction requested by counsel for defendant:

"It has been contended by the Government that Potter notified certain entrymen when they should visit their claims. I charge you that there is nothing illegal in this connection. It is admitted that Jones had agreed, if the entrymen desired him to do so, that he would advance the expenses incidental to each entry up to $60.00, and I have charged you that such agreement was legal."

XXVI.

The court erred in refusing to give the following instruction requested by counsel for defendant:

"It is in evidence in this case that the lands in question are heavily timbered and not by nature agricultural in character except after the timber has been removed; however, the Government of the United States, with knowledge of the character of these lands, made provision for their disposition under a homestead settlement, and in no other way, and it must be presumed that in passing a law for the disposition of these lands under homestead settlement the Government of the United States expected only such settlement, residence, use

and cultivation as could reasonably be afforded under the circumstances."

XXVII.

The court erred in refusing to give the following instruction requested by counsel for defendant:

"In all the final proofs offered and admitted as evidence in this case, the 5th question is as follows:

'Of whom does your family consist; and have you and your family resided continuously on the land since first establishing residence thereon (if unmarried state that fact)?'

This question was asked of and answered by each claimant. In the proofs of the soldiers' widows, each answered in substance that the claimant had not resided on the land.

I charge you that the law did not and does not require residence of a widow of a veteran of the Union Army during the Civil War. In the proofs submitted by the soldiers, many, and perhaps all, show that the claimants answered in substance either, 'That has been my residence,' or 'I have made continuous residence on the land,' or other similar statements. In connection with these proofs, I charge you that this question is ambiguous. The words 'resided continuously on the land' do not mean actually being on the land continuously, but they mean 'Has the entryman resided on the land such part of the time as did not permit

of an absence of sufficient length of time as to interrupt the continuous residence?' An absence without a sufficient excuse for more than six months is held to be an abandonment of the homestead and will work a forfeiture."

XXVIII.

The court erred in refusing to give the following instruction requested by counsel for defendant:

"Intent is vital in this cause. If the nine entrymen who filed on the nine claims in question honestly believed they knew what were the requirements of the homestead law and if these entrymen acquired what they believed to be correct information as to the requirements of the homestead law prior to meeting Jones or entering into the plan complained of, or secured such information independent of Jones, then if these entrymen honestly believed they were complying with the law, then Jones cannot be held responsible for an act of these entrymen based upon a mistaken idea of the law.

If Jones should have honestly given a mistaken interpretation of the law, he could not be held responsible because the wrongful intent would be absent."

XXIX.

The court erred in instructing the jury, in the following instruction, to add legal interest at the rate of 6 per cent per annum to their verdict as a

part of the measure of damages, which instruction so given is as follows:

"I will now instruct you touching the measure of damages in the event that you find for the plaintiff. If, under the testimony, you are convinced that the plaintiff in this action is entitled to recover, I instruct you that the measure of damages which plaintiff will be entitled to recover from defendant would be the market value of such of these nine claims as you may find that the Government is entitled to recover, at the time of the issuance of the final certificates by the land officers of the United States; that is, such price as the lands would at that time have brought in open market, offered by a seller who was not obliged to sell, to a buyer who was not obliged to buy, with legal interest at the rate of 6 per cent per annum from that date to this. And in arriving at this conclusion, you may take into consideration the location of the lands, their quality, and their accessibility to roads, railways, or other means of transportation, and from all the legitimate facts before you, determine what the reasonable value of these lands was at the time that the Government parted with its title. You will bear in mind the testimony adduced on this subject."

XXX.

The court erred in overruling defendant's motion for a new trial.

XXXI.

The court erred in rendering a judgment on the verdict against defendant in the sum of $18,204.84, and for costs and disbursements in the sum of $610.79.

JOHN H. HALL,
JAY BOWERMAN,
Attorneys for Defendant.

PLAINTIFF'S TESTIMONY.

J. L. WELLS, a witness called on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Mr. Wells, where do you live?

A. I live at 600 East Ankeny Street.

Q. City of Portland?

A. Yes, sir.

Q. How long have you lived in Portland?

A. About 32 years.

Q. Are you a member of the G. A. R.?

A. Yes, sir.

Q. How long have you known Mr. Jones, the defendant in this case?

A. Oh, I have known him about 35 years.

Q. Do you also know one Thaddeus Potter? Thad Potter?

A. I know him, yes. Thaddeus Potter.

Q. How long have you known him?

A. Well, I haven't known him quite so long; about eighteen or twenty years. Oh, twenty years, I guess; it may be more.

Q. What business were you in during the year 1900, or thereabout?

A. Real estate and insurance.

Q. Did you ever have any talk with the defendant Jones concerning locating any soldiers, old soldiers, on any homestead lands?

Mr. Hall: If the court please, defendant desires to interpose an objection to this question, and to the taking of any evidence in this case, any further evidence on the part of this witness or any other witness, for the reason that the complaint, and the allegations in the complaint, admissions and allegations in the reply do not show that the Government has any cause of action against the defendant.

Objection overruled. Defendant allowed an exception.

Court: I suppose you base your objection upon the ground that the case was decided against the Government by this court?

Mr. Hall: Yes.

A. I did.

Q. Now, just state the conversation in your own words, where it was held and when it was held.

A. I think, according to my other statements, Mr. Potter first came to my office. I think that is my statement before. He came to my office and made the statement regarding locating old soldiers, or the widows first.

Mr. Hall: Object to any conversation unless Mr. Jones was present.

Mr. Goldstein: We will later connect that up. Mr. Potter and he went over to Jones' and had a conversation there.

Court: Get him over to Mr. Jones and get that conversation.

Q. Did you accompany Potter to Mr. Jones' office afterwards?

A. I did.

Q. Now, just state what conversation was held at that time between yourself and Mr. Jones.

A. Well, that is a long time ago, and you have those statements in writing there, that I made my statements afterwards, and I cannot follow it in detail as to what the statements were; but anyhow it was a matter of locating widows and old soldiers on Government lands.

Q. What were you to do? What did he request you to do, if anything, concerning this matter?

A. I was requested to hunt up old soldiers that had served two years in the army, and that they were to file on these lands.

Q. What lands?

A. As my statement says there before.

Q. Well, you can tell the jury, please, what lands they were to file on.

A. On what was known as the Siletz Reservation, down on Siletz River, or down in Lincoln County, which you all probably are well acquainted with it.

Q. What else did he say as to what you were to do after you interviewed these soldiers?

A. Why, we were to go down on the lands, visit the lands, reside on the lands if we desired to.

Q. Was there any talk about any form of contract?

A. Yes, there was a contract.

Q. What were you to do with reference to that contract?

A. Each one was to sign a contract in regard to the matter of money advanced for the improvements and otherwise.

Q. How many old soldiers did you see?

A. Oh, I must have seen 20 or 25 or more.

Q. Prior to that time, did you see any old soldiers' widows?

A. I did.

Q. At whose request?

Objected to.

A. At Mr. Potter and Jones.

Mr. Hall: Objected to as irrelevant and immaterial in this case as to any other acts that may have been done by the defendant here upon which the Government is not claiming anything.

Mr. Goldstein: If the court please, I think we will connect it up, show it was all part of the same general scheme; show purpose and knowledge on the part of the defendant.

Court: You better show the main act first and then you can show the other.

Q. Do you recall what soldiers you interviewed or saw?

A. How.

Q. Do you recall who the old soldiers were that you saw?

A. Oh, I could, yes.

Q. Do you know the names? Can you give the names?

A. Yes.

Q. Just detail them.

A. I saw a good many of them.

Mr. Hall: If the court please, defendant objects at this time to detailing or going into any of the transactions other than the old soldiers that are specifically mentioned in the complaint, as being irrelevant and immaterial.

Mr. Goldstein: If the court please, in order to save time, we will proceed now with merely these nine, and I think later we would be entitled to prove the interviews with the others.

Court: Very well.

Q. Do you know a man by the name of W. Teghtmeier?

A. W. T. what?

Q. W. Teghtmeier?

A. No, I don't.

Q. Teghtmeier?

A. Oh, yes, I knew him when he was alive.

Q. Did you interview him with reference to filing upon these lands?

A. I did.

Q. At whose request?

A. I did.

Q. At whose request?

A. At the same as the others—all Mr. Potter and Jones.

Q. What, if anything, did you say to him concerning these lands?

Objected to as immaterial and incompetent.

Objection overruled. Exception allowed.

A. I told him in regard to the matter that if he served two years he would get title to the land for one year's service.

Q. You mean one year's residence?

A. One year's residence.

Q. What, if anything, did you say to him as to the manner whereby he might prove up on this claim and secure his patent?

A. I told him that the land would be taken up and the work would be done by Jones and Potter, and at that time we didn't expect to make a permanent residence on the place only in regard to the matter of voting; that we wasn't to take any actions in any kind of way only during the process of

proof, final proof, until the final proof was gotten.

Q. What, if anything, did you say as to whether you had to live on the land?

A. They had the privilege of living on the land; we all had the privilege of living on the land the whole time. That was the understanding—that we could go there and live there if we wanted to.

Q. What, if anything, did you say as to whether he must live on the land?

A. Well, at that time there wasn't very much talked about.

Q. What did you tell them about that?

A. I didn't tell them anything about that. I just simply got the men, and they were to get their information from Jones and Potter.

Q. What, if anything, did you say about the cultivation and improvement on the land?

A. I said the cultivation and improvement would be done by men down there that was locating them.

Q. And did you enter into any form of contract or get him to sign some contract?

A. There was a contract, yes.

Q. And who furnished you the form of contract?

A. Mr. Potter and Jones; Potter mostly brought them over.

Q. And what, if anything, did you do with the contract after it was signed?

A. It was given back to Mr. Jones.

Mr. Goldstein: Have you got that contract?

Mr. Bowerman: I don't think so. You have a copy of it in the complaint, haven't you?

Mr. Goldstein: That was never produced.

Q. I show you this paper, and ask you if that was the form of contract that you have reference to?

A. That was the form of contract, as far as I can remember. I know it is on file there with my former statement. This is Mr. Riggs' signature.

Mr. Goldstein: I offer in evidence the form of contract merely for the purpose of proving the form of contract.

Mr. Hall: If the court please, I don't think this will be necessary, for the reason that the form of contract is set forth in the bill of complaint, and is admitted, and we are willing to admit that all of these contracts were in the same form.

Mr. Goldstein: I will read into the record, then, the form of contract.

Court: You may let that go in evidence, if you like, because the jury may want to refer to it.

Marked "Government's Exhibit 1."

THIS AGREEMENT, made this .... day of ....., 1900, between ....., of Portland, Oregon, the party of the first part, and ....., the party of the second part, WITNESSETH:

party of the second part, WITNESSETH:

That whereas, the party of the first part is entitled to the benefits of the Act of Congress of June 8, 1872 (Sec. 2304, R. S.), giving homesteads to

honorably discharged soldiers and sailors, and desires to avail himself of the privileges therein granted by taking a homestead, and the party of the second part is in the possession of information relative to the existence of public lands within the State of Oregon subject to such entry;

Now, therefore, the party of the second part, in consideration of the covenants and agreements on the part of the party of the first part hereinafter stipulated to be kept and performed, hereby agrees to give to the party of the first part information which will enable him to locate and file a homestead upon 160 acres of the public lands of the United States, situated within the State of Oregon, and the party of the first part hereby agrees to pay to the party of the second part as compensation for such information, and for his services to be performed in the preparation of the papers and affidavits necessary in making such filing, the sum of $185, to be paid at the time and in the manner hereinafter designated.

The party of the first part further agrees to employ, and does hereby employ the party of the second part to build a house upon the land to be taken up under the foregoing agreement, and agrees to pay the said party of the second part therefor the sum of $100, to be paid at the time and in the manner hereinafter designated, and also to clear and cultivate the land to be taken up under this agreement, or so much thereof as is required, and

for the time required by the laws of the United States in order to perfect title thereto, and to pay the said party of the second part therefor the sum of $175, to be paid at the time and in the manner hereinafter designated. And the said party of the first part agrees to comply with the laws of the United States in regard to residence upon said lands, taken as a homestead. The said party of the second part hereby accepts such employment, and agrees to do and perform, or to cause to be done and performed all work and labor necessary to be done and performed upon said premises in order to comply with the laws of the United States.

The party of the second part hereby agrees to advance to the party of the first part, if required, the amount of fees required at the Land Office in order to make and perfect such filing, and all necessary expenses of the party of the first part in connection therewith, not to exceed the sum of $60, and the party of the first part agrees to repay to the party of the second part all sums of money so advanced at the time and in the manner hereinafter designated.

The party of the second part further agrees that after final proof shall have been made upon said claim, he will, at the option of the party of the first part, procure for the party of the first part a loan, not to exceed the sum of $720, to be secured by first mortgage upon said claim, and immediately upon procurement of such loan, a

sums of money herein stipulated to be paid to the party of the second part by the party of the first part, together with all sums of money advanced by the party of the second part to the party of the first part under this agreement shall become due and payable, and shall be paid out of the loan so secured; and it is further understood by and between the parties hereto that the payment by the party of the first part to the party of the second part of all sums of money hereinbefore designated shall be conditional upon the procurement by the party of the second part of the loan hereinbefore mentioned, if the same shall be required.

In case the party of the first part shall not wish to avail himself of the loan hereinbefore mentioned, then, and in that event, all moneys advanced to the party of the first part by the party of the second part under this agreement, together with all sums of money hereby agreed to be paid to the party of the second part by the party of the first part shall become due and payable as soon as final proof shall have been made upon said claim.

Witness our hands the day and year first above written.

HENRY M. RIGGS.

U. S. District Court,
District of Oregon.
Filed Dec. 12, 1918.
G. H. Marsh, Clerk.

Q. Were these contracts received by you in blank from Mr. Jones, or were they filled out?

A. Well, I think they were all filled out, as far as I remember right, and signed. I think you will find in my statement before all about that. I don't remember back what I said—I have said so much about it. You have it all there. It was a good many years ago.

Q. Do you know an old soldier by the name of R. D. Depue?

A. I did.

Q. Was he one of the old soldiers whom you interviewed in pursuance of this plan?

A. Yes, he was one of them.

Q. Reverting to Teghtmeier, do you know whether he is alive or dead?

A. He is dead.

Q. And when did he die?

A. I don't know. His widow is right here now.

Q. How about Depue? Is he alive or dead?

A. I understand he is dead.

Q. Did you have the same conversation with Depue as you had with Teghtmeier?

A. I did.

Q. Did he also enter into a contract with Jones?

A. I think he did.

Q. Do you know Joseph Gillis?

A. I did.

Q. Is he alive or dead?

A. He is dead.

Q. Did you enter into a form of contract the same as with the others?

A. I did.

Q. Do you know an old soldier by the name of Thomas Johnson?

A. I did.

Q. Is he alive or dead?

A. He is dead.

Q. Did you enter into a form of contract with him the same as the others?

A. I did. That is, I think I did. I won't say now positively about Mr. Johnson. I don't believe I did, if I remember right.

Q. Did you know an old soldier by the name of E. C. Brigham?

A. I did.

Q. Is he alive or dead?

A. No, sir.

Q. Is he alive or dead?

A. Dead.

Q. Did you enter into a form of contract with him the same as the others?

A. I did.

Q. Do you know an old soldier by the name of A. Gannon?

A. I did.

Q. Is he alive or dead?

A. He is dead.

Q. Did you enter into a contract with him the same as the others?

A. I think I did.

Q. Do you know an old soldier by the name of Benjamin S. Hunter?

A. I did. I do.

Q. Is he alive or dead?

A. He is alive. He is here.

Q. Did you enter into a form of contract with him the same as the others?

A. I think not.

Q. Do you know an old soldier by the name of O. I. Conner?

A. I do.

Q. Is he alive or dead?

A. He is alive.

Q. Did you enter into a form of contract with him the same as the others?

A. I don't remember if I did or not.

Q. How many other soldiers in addition to these eight that I have mentioned did you—

Objected to as immaterial.

Objection overruled. Exception allowed.

Q. Did you interview?

A. Must have been ten or a dozen more.

Q. Ten or a dozen more?

A. Yes.

Q. And how many contracts in all do you think you secured them to sign?

Mr. Hall: Same objection, incompetent, irrelevant and immaterial.

Objection overruled. Exception allowed.

A. I wouldn't try to say. I don't remember.

Q. About how many?

A. I wouldn't say, because I don't remember how many there was.

Q. Just tell the jury if you can, as much as you remember, as to what you told all of these soldiers with reference to it.

A. I see several of the soldiers here before me now this morning. You haven't named but one or two of them, and they will very probably be on the witness stand to testify, and they can tell better than I can, because they can remember better than I can.

Q. Please, Mr. Wells, try and remember what you said to them concerning these things.

A. I might have interviewed them, and had them to sign up, and yet I may not, because some of them went to the office, Mr. Potter's and Jones' office, and signed up.

Q. What did you tell them with respect to proving up on these claims?

A. Why, I don't know that I told them much of anything, because I wasn't the—

Q. Did you take them over to see Mr. Jones, or any of them?

A. I had them go—give them his place of business.

Q. Where was his place of business?

A. In the Worcester building, I think it was then.

Q. With whom was he officing, do you know? With whom did he have an office, do you know?

A. Well, think they had an office, Potter and him had an office together.

Q. Just what did you say to any one of them about the signing of the contract before they signed? What were the inducements that you made to them?

A. Oh, I don't know what I did say, really. I might have said "Take and read it, and look over it, and see what you think about it, and if you cannot sign it up, why, it is all right," or some way that way. I don't remember just what I did say. That is a long while ago—18 years ago, nearly.

Q. What did you say to them, if anything, as to what they were to receive after they made final proof?

A. I told them that they were to receive $200.

Q. From whom?

A. From Mr. Jones and Potter.

Q. What, if anything, did you say as to whether they would have to improve the land, or make cultivation, or whether somebody would do it for them?

A. Well, I think our impression was, and it was, that somebody else would do the improvements.

Q. What did you tell them about having to live on the land before they made final proof?

A. I don't know as I told them anything. They would get that information from Mr. Jones and Potter.

Q. Did you tell them where they had to live before they made their proof?

A. No, I don't think I did.

Q. Did Jones tell you what to say to these soldiers? Now, just tell the jury what Jones told you, if anything, as to what representations you were to make to these old soldiers.

A. Well, I don't believe that Jones told me anything in regard to that matter, excepting that they were to file on it, and that they were entitled to a homestead, if they served two years in the Army, by holding it one year; and our impression was that we would go down there once in every six months, or we could go down there and live there all the time if we wanted to.

Q. Where did you get this impression?

A. I got it from Mr. Jones and Potter, or Potter and Jones.

Q. What was the purpose in taking this land? Was it to make a home, or to sell to Mr. Jones?

A. I don't know—it was a timber claim.

Mr. Hall: Objected to. He cannot testify to the purpose of these other men.

Court: If he got it from talking with Mr. Jones, I suppose he can tell what his purpose was.

Mr. Hall: He can tell what Mr. Jones said.

Court: Yes.

Q. What did Mr. Jones tell you as to his idea and purpose in having you see these old soldiers to file on this land?

A. I think the purpose was to get possession of them in some way or other, in buying them from each one that took up the land.

Q. Who was to get possession of them?

A. I think it was Mr. Jones, or whoever he wanted to.

Q. What was the next thing that was done after you got them to sign these contracts?

A. I think the next thing that we done was to go down on the land—go down and see the land. I think that was it.

Q. Who arranged for you to go down and see the land?

A. Mr. Potter done the most of the arranging.

Q. Who paid the expenses to go on the land?

A. Mr. Potter paid the expenses. He went down with us.

Q. And how many of you went down together?

A. Oh, there was quite a number the first time.

Q. And do you remember who of these eight entrymen went down the first time?

A. How many?

Q. Yes.

A. Well, I don't remember. It must have been 15 or 20.

Q. What was the purpose, as told you by Jones or Potter, concerning the reason for going down and visiting this land?

A. Because we had filed on the land, and the purpose was to make settlement, I suppose, by our presence upon the land.

Q. And how long did you stay on the land?

A. We didn't stay very long. Stayed over a couple of nights, I think, the first time, a couple of days.

Q. Where did you stay?

A. Most of us stayed at what is called Canoe Landing the first time, and then went over the lands the next day.

Q. This Canoe Landing, is this the general headquarters?

A. What is that?

Q. What was this place, Canoe Landing?

A. Why, it was a landing on the Siletz River.

Q. Was that on any of the claims filed upon?

A. No, it was not.

Q. So you didn't stay upon the claims, then?

A. Not that night.

Q. So none of the entrymen, or none of these men who signed these contracts stayed on any of their claims the first time?

A. I think there was several of them went out to their claims that night from that place.

Q. Was there any habitation there?

A. No, no habitation there.

Q. How long did you stay there?

A. We just stayed there that night. We was late getting in there.

Q. Where did they sleep that night?

A. Some of them slept there, and some of them slept out on their claims.

Q. How long altogether were you there the first time?

A. I think we was there two days and two nights.

Q. Then what did you all do?

A. They went out to their claims; visited their claims.

Q. What did you all do after you did that?

A. I don't know what they all done.

Q. I mean, did you return back to Portland?

A. Most of them did, yes.

Q. Were these soldiers all residents of Portland?

A. I don't think they all were, maybe they were all; very near it.

Q. Were any of them residents of Lincoln County?

A. Not that I know of.

Q. And then they all returned to their homes after a two day visit?

A. Yes.

Q. Who paid the expenses for going and coming?

A. Mr. Potter.

Q. Whose money was it?

A. Well, I don't know. I suppose it was furnished by Jones. I don't know.

Q. And then what was done after that? After that first visit?

A. Well, about in less than six months there was some more of us went down.

Q. How long after?

A. I think it was a little less than six months.

Q. Had they made their applications to file on the land?

A. Oh, yes. Yes, they had made their applications.

Q. Who furnished the fees for the filing of these applications?

A. Well, it was paid through Mr. Potter.

Q. By whom?

A. Mr. Potter.

Q. Who furnished the money, do you know?

A. I don't know, unless Mr. Jones did.

Q. What was done on that second visit?

A. How is that?

Q. What was done on that second visit?

A. We went then, mostly all of us went to our claims, directly to our claims.

Q. What had been done prior to that time with respect to the claims?

A. Well, there was a cabin put up, and som little clearing.

Q. Who put up the cabin?

A. Some parties down there. I don't kno what their names was.

Q. At whose request?

A. I suppose it was through Jones and Potte

Q. It was not done, then, at the request o any of these entrymen?

A. How is that?

Q. It was not done, then, at the request o any of these entrymen?

A. I believe not. No, I think not.

Q. And who did the clearing?

A. They did it. They stayed down there.

Q. Who were they that did the clearing, d you know?

A. Those men that were down there.

Q. Would you say the entrymen did the clear ing?

A. No.

Q. Then it was not the entrymen that did th clearing?

A. No.

Q. Who ordered this clearing done?

A. I presume Mr. Potter and Jones had i done.

Q. Who paid for this clearing?

A. I presume they did.

Q. Who paid for the cabins?

A. I presume they did.

Q. Whom do you mean by "they"? I wish you would mention the names.

A. Mr. Potter and Jones.

Q. What was the extent of this clearing upon these claims?

A. Oh, I presume it was about an acre, apparently; looked that way to me.

Q. What was the extent of that? Was it clear?

A. Why, there was some of it was cleared very nicely, and planted into a little crop of something or other—of oats or turnips—potatoes. I seen some of them had oats, turnips—potatoes and such like; and some fruit trees put on too.

Q. About how many fruit trees?

A. I didn't count them.

Q. About two or three?

A. Oh, yes, there was more than that.

Q. Were the crops used by any of the entrymen?

A. No.

Q. What was the purpose of that, do you know?

A. I don't know.

Q. What was done on the second visit?

A. We went down there and visited just the same as before.

Q. And who paid for the expenses of the second trip?

A. I think it was the second trip that the money was furnished me.

Q. Who paid you the money?

A. Mr. Jones.

Q. What did he give you the money for?

A. To pay the expenses.

Q. Expenses of whom?

A. Well, I think there was only about eight or ten of us, maybe less than that, that went down.

Q. Old soldiers?

A. Yes, sir.

Q. You mean these entrymen?

A. Yes, sir.

Q. Who requested you to make this second visit?

A. Mr. Jones.

Q. Did he notify you when to make this second visit?

A. Yes.

Q. What did he tell you the visit was for?

A. Why, to comply with the law.

Q. And how long did you stay on this second visit?

A. We stayed over night.

Q. And then what did you do?

A. Came back home.

Q. Do you mean back to Portland?

A. Yes, sir.

Q. Where did you stay that night?

A. We stayed, after we visited our cabins, we

came back to a certain place, where we all stayed around the cabin and slept.

Q. You mean you slept in that general headquarters cabin?

A. Yes.

Q. None of the entrymen, then, slept in their own cabins?

A. I think there was some of them went and slept out—I know some of them took their blankets down—I think some of them went to their cabins and slept there, but who they were—

Q. What was the extent of the building of this cabin? Was there any floor?

A. I don't remember just how big cabins they were; about 10x12—something that way.

Q. There was no floor in the cabin at all, was there?

A. I think not. There was some of them I think had floors in.

Q. Was there any bedding—any beds?

A. No, there was only bunks.

Q. Were there any bunks in there? Any stoves?

A. No, no stoves.

Q. No stove. Any windows?

A. Yes, there was windows.

Q. How many?

A. One, I think, and a door.

Q. Were the windows in place, or just holes?

A. How is that?

Q. Were the windows in place? Were there any panes? Any glass?

A. Oh, yes, window glass.

Q. Did you buy the tickets for these men to make the visit—the railroad tickets?

A. Yes. No, I didn't buy them. I don't think I bought them.

Q. Who did?

A. I think Mr. Potter or Jones bought them for me.

Q. Were they return trip tickets?

A. I don't believe they were. I wouldn't say positive. They may have been.

Q. Did Mr. Jones come to see you off?

A. No.

Q. Did Mr. Potter?

A. I think Potter did.

Q. What, if anything, was said as to how long you were to stay on the second visit?

A. There was nothing said about how long we was to stay. We could stay—

Q. Who paid for the provisions?

A. I presume that Mr. Jones did.

Mr. Hall: Objected to unless the witness knows.

Q. Did the entrymen pay for them themselves?

A. No, I don't think so.

Q. Whatever money you expended was money furnished to you by whom?

A. I presume it was furnished by Mr. Jones.

Q. Was it paid by yourself?

A. It was paid to me, and I paid the expenses.

Q. I mean, were the expenses outlaid by your own money?

A. My own?

Q. Yes.

A. No.

Q. Whatever money you received, you received from whom?

A. Jones and Potter.

Q. Do you know where these men lived while they were maintaining their claims?

A. Why, I know where most of them lived.

Q. Where?

A. Most of them lived in East Portland.

Q. Did any of them have families?

A. Yes, they had wives, some of them.

Q. Where were the families living all this time?

A. They lived there.

Q. Lived where?

A. Home.

Q. What do you mean by home?

A. Portland.

Q. East Portland?

A. In Portland.

Q. Did they take their families down with them when they made the visits?

A. Some of them did take their wives. That was all they had was their wives. They went down and made one or two trips with their wives.

Q. Then they went down to Newport for a visit, did they?

A. They went afterwards to Newport.

Q. It was more in the nature of a visit than to live on the land, was it?

A. No.

Objected to as suggestive and leading.

Court: I think those questions are leading.

Q. Now, Mr. Welis, what was done after the second visit?

A. After the second visit?

Q. Yes. You described two visits now.

A. Well, there was about five or six of us went down in the winter time.

Q. Who requested you to go down?

A. The same parties.

Q. Who were the same parties?

A. Jones and Potter.

Q. What did they tell you to go down for?

A. To take them down there and make a visit to their claims.

Q. How long did you stay on that occasion?

A. That time we only stayed one night.

Q. Where did you stay that night?

A. Most of them stayed at one place, because it was an awfully bad night.

Q. You mean the headquarters cabin?

A. Yes.

Q. Did any of them stay—those, of course, didn't stay on their claims then, did they?

A. No, they didn't stay that night. It was too bad a night.

Q. You returned then where to?

A. Returned to Toledo.

Q. And then where?

A. Home.

Q. And by "home" you mean Portland?

A. Yes.

Q. Was that all the visits that were made by any of those entrymen?

A. Why, I think not. I think some of them went down afterwards. There were two parties, you know; Mr. Brigham took down a part of them at different times. They didn't all go with me.

Q. Who paid for the expenses of the third visit?

A. Jones and Potter.

Q. What, if anything, did you tell these entrymen as to what they were to do after they got their titles to the land?

Mr. Hall: Object to what he told them, to what this witness told them to do, unless he was authorized by Mr. Jones to make the statement. That would have to be shown.

EXAMINATION BY THE COURT.

Q. Did Jones tell you that?

A. No.

Q. You were not engaged?

A. No, I was not, no.

Q. Well, did Jones instruct you about taking these men?

A. No, he didn't. I was to take them to him. They were to go to Mr. Jones for instruction.

Q. Well, were you then requested by him to find these men?

A. That is all.

Q. And you were to take them then to him?

A. I was to take them to him, or send them there. I didn't have to go to him, but I was to send them.

Q. You were not instructed to give any instructions to the men about what they should do in getting this property?

A. No instructions at all from me.

Court: Proceed.

Mr. Goldstein: Does the court think that he could not testify?

Court: He said he had no instructions from Jones to tell them anything. I don't see how his testimony would be relevant on that subject.

EXAMINATION BY MR. GOLDSTEIN RESUMED.

Q. Who was present with you when the filings were made originally? Were you with the entrymen when the filings were made?

A. When the filing was made?

Q. Yes.

A. I think not. I might have been with some of them.

Q. Did you make a filing yourself?

A. I did.

Q. Did you enter into a form of contract the same as the other with Mr. Jones?

A. I did.

Q. And what did Mr. Jones say to you as to what was to be done with that land after you secured title?

A. Just the same as the others.

Q. What were you to receive?

A. I received less than $200—I was to—because I owed him some.

Court: Did you take up a claim yourself?

A. I did.

Q. What did Jones tell you as to what was to become of this land after you got the title? How was it to be disposed of?

A. Well, he never told me anything about that, because at that time there was no sale for lands, or anything of the kind. It looked like it was a big undertaking, and a lot of money spent, and there was no value for lands at that time.

Q. But what were you to receive for doing these things?

A. I got five dollars for each man that I got to file on the land. That is all.

Q. You got five dollars for each man that you secured to file on this land?

A. Yes, sir.

Q. From whom did you receive this five dollars?

A. I received it from Potter and Jones, I suppose.

Q. And how many of these entrymen did you secure at that rate?

A. Well, I suppose I procured him about twenty.

Q. You received one hundred dollars for filing these soldiers?

A. Yes, I presume I received about one hundred dollars.

Q. Then what were you to do with your land, the land you received?

A. I deeded it over to Mr. Jones.

Q. At whose request?

A. Jones'.

Q. And how much did you receive for that?

A. I received just the same as the others.

Q. And was that the understanding you had with Mr. Jones?

A. That was the understanding.

Q. That you were to deed the land over to Mr. Jones?

A. That was the understanding. I signed a contract just the same as the others.

Q. And you were to receive two hundred dollars for doing that?

A. Yes.

Q. Did you at any time ever intend to file on this land as a home?

A. No, not exactly.

Q. Did any of the others intend to file upon those lands as a home?

A. Not exactly, as I understand. I cannot answer that.

Q. Yes. Now, did you ever intend to give up or abandon your home in Portland, to live upon that land as a homestead, as your home?

A. Well, not at that time; but I am very sorry I didn't do it.

Q. Were you present when final proofs were made by these eight entrymen that I mentioned?

A. Not all of them, no.

Q. Who were the entrymen who made the final proofs that you were present at?

A. Who were they?

Q. Yes.

Mr. Hall: I object to that.

A. I don't remember.

Q. Do you remember Teghtmeier?

A. I do.

Q. Were you present when he made his final proof?

A. I won't say, but it seemed to me I was.

Q. Were you or not a proof witness for Mr. Teghtmeier?

A. Very probably I was.

Q. Who notified you, or the entrymen, when you were to make final proof?

A. Well, I presume that came from the office of Jones and Potter.

Q. Who paid the expenses to visit the office to make final proof?

A. Jones and Potter.

Q. Who paid the fees for filing?

A. Jones and Potter.

Q. I show you this, and ask you if that is your signature.

A. Yes, that is my signature.

Mr. Goldstein: I offer in evidence the testimony of John L. Wells, proof witness to the homestead entry of William Teghtmeier.

Objected to as incompetent and immaterial.

Objection overruled. Exception allowed.

Marked "Government's Exhibit 2." Read in evidence.

4-369.

HOMESTEAD PROOF—TESTIMONY OF WITNESS.

John L. Wells, being called as witness in support of the homestead entry of William Teghtmeier for S½ of NE¼ & N½ of SE¼, Sec. 10, T. 9 S., R. 10 W., testifies as follows:

Q. 1. What is your name, age and postoffice address?

A. John L. Wells, age 54, Siletz, Oregon.

Q. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

A. Yes.

Q. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

A. No.

Q. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal or mineral land.

A. Farming land when the timber is off of it. Agricultural land.

Q. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

A. In August or the first of September, 1900. He established actual residence about six months later.

Q. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

A. He has made it his continuous residence excepting what time he has been off for a little while. He is married. Family resided with him.

Q. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

A. About three months each time. For the pur-

pose of making a living. No, his family went with him. They could not stay down there.

Q. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

A. Something over an acre. Raised crops one season.

Q. 9. What improvements are on the land, and what is their value?

A. House 14x16 ft. House is log house. Some apple trees planted and about two miles of roadway cut into his place. Value from $250 to $300.

Q. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

A. Nothing that I have ever seen.

Q. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

A. Not that I know of.

Q. 12. Are you interested in this claim; and do you think that the settler has acted in entire good faith in perfecting this entry?

A. No. I do.

(Sign plainly with full christian name) John L. Wells.

I Hereby Certify that the foregoing testimony was read to the witness before being subscribed and sworn to before me this 26th day of

May, 1902, at my office at Oregon City, in Clackamas County, Oregon.

WM. GALLOWAY,
Receiver.

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

4-369.

HOMESTEAD PROOF—TESTIMONY OF WITNESS.

George West, being called as witness in support of the homestead entry of William Teghtmeier for S½ of NE¼ and N½ of SE¼, Sec. 10, T. 9 S., R. 10 W., testifies as follows:

Q. 1. What is your name, age, and postoffice address?

A. George West, age 59, Siletz, Oregon.

Q. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

A. Yes.

Q. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

A. No.

Q. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal or mineral land?

A. Agricultural land.

Q. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

A. I think it was the 20th of February, 1901. Established actual residence the same time.

Q. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

A. Yes. He is married.

Q. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

A. From two to three months. Business and to make a living. His family cultivated the land during his absence.

Q. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

A. An acre or more. Raised crops this is the second season.

Q. 9. What improvements are on the land, and what is their value?

A. Fruit trees, variety, vegetables. Cabin 14 by 16 ft. An acre or more of cleared ground. Value from $200 to $300.

Q. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

A. Not that I have ever seen.

Q. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

A. No.

Q. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

A. No. Yes.

(Sign plainly with full christian name) George West.

I HEREBY CERTIFY that the foregoing testimony was read to the witness before being subscribed and was sworn to before me this 26th day of May, 1902, at my office at Oregon City, in Clackamas County, Oregon.

WM. GALLOWAY,
Receiver.

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

U. S. District Court,
District of Oregon.
Filed Dec. 12, 1918. G. H. Marsh, Clerk.

Q. Where were you living at that time when you made final proof?

A. I think I was living in Portland, East Portland.

Q. How did you happen to give Siletz, Oregon, as your residence?

A. I presume that is the way all the proofs are.

Q. At whose request, or on whose direction, did you answer Siletz, Oregon, instead of Portland, Oregon?

A. Well, that I really don't know hardly how that was. Now, I presume that you will find it in my other testimony how that came.

Q. Well, it must have been at someone's suggestion that all of these were given.

A. I presume it was from Potter. Potter was, I believe—

Mr. Hall: I object to the witness testifying unless he has a recollection of who told him to do that.

A. Potter was with us at the time.

Court: You must testify from what you recollect about the matter.

A. Well, as far as that was concerned, I felt like while I had the claim there, that my real residence, as far as voting was concerned or anything that way, was down there. I took no part in voting

or anything while I was here while I had the claim.

Q. But did you not act as a judge of election here in Portland?

A. I don't think so. I don't know whether I did or did not.

Q. Where was your family living at the time?

A. I was not married at that time. I had no family. Maybe I had a family. I think not.

Q. Wasn't it discussed as to having all these entrymen give Siletz, Oregon, as their residence?

Objected to as leading and suggestive.

Court: What is the fact about that?

A. What is that?

Court: I say, what is the fact about that? The question put to you by the counsel—was it discussed as to where the residence should be?

A. Yes, it was discussed that we would claim our residence at those places, and the postoffices was at different places wherever the claims was.

Q. Well, did you receive mail at Siletz, Oregon, or did you receive mail at Portland?

A. Received mail here excepting, if I understand it right, the mail was sent to those postoffices in regard to the land.

Q. Notices of the Land Office were sent to Siletz?

A. I think the mail was sent off there.

Q. Then where were they sent to by the Postmaster?

A. I think they were returned here.

Q. To whom?

A. To the parties. I wouldn't say about the others how they were.

Q. Now, about yours? Where was your notice sent?

A. I believe my notice was sent to Siletz.

Q. And from there, where were they returned?

A. Returned to my address.

Q. What address?

A. 100 Grand Avenue.

Q. Did you leave an address with the Postmaster there?

A. I think I did. I won't say positive about that. I don't remember anything about that

Q. Well, then, you knew that your postoffice address was not Siletz, Oregon, but it was Portland, Oregon?

A. Well, in regard to the legal address in regard to the land, that was.

Q. The question is, "Are you well acquainted with the claimant in this case, and the land embraced in his claim? A. Yes. Q. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business? A. No. Q. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land? A. Farming land when the timber is off of it, agri-

cultural land." Did you intend to use your entry as a farm?

A. Well, it was all right for that when the timber was off.

Q. But there was no timber off, was there?

A. No timber off of it at that time.

Q. Did you intend to remove the timber?

A. No, I didn't intend to do anything with it.

Q. Well, then, why did you put that answer there?

A. What was that?

Q. That it was farming land?

A. Well, it is good farming land.

Q. At whose request did you so state? Was there any discussion?

A. I knew that by observation.

Q. Was there any discussion as to the answers to be given in these proofs?

A. I think not. I don't think so.

Q. Who went with you to the Land Office when you made the final proof?

A. Mr. Potter.

Q. How?

A. Mr. Potter, I think.

Q. Mr. Potter?

A. I think so, yes.

Q. "Q. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon? A. In August or the first of September, 1900. He established actual

residence about six months later." Was that true, or wasn't it?

A. Well, I don't know. Mr. Teghtmeier didn't go down with me. He went down with Mr. Brigham.

Q. You swore he established actual residence there six months after he made his application. Was that true or untrue?

A. I don't know whether it was or not. I know he went down. I knew he went down.

Q. Do you know whether he established his actual residence there at any time?

A. I don't know anything about that.

Q. You knew, as a matter of fact, he established his actual residence here in Portland?

A. I knew he lived here, yes.

Objected to as leading.

Q. At whose request did you so state?

A. At whose request?

Q. Yes.

A. I presume it was through Mr. Teghtmeier, a neighbor of mine.

Q. Did Mr. Teghtmeier tell you to give that answer, or anyone else?

A. Or Potter. I think that was through direction of Mr. Potter, how it was to be done.

Q. Direction of Mr. Potter?

A. Yes.

Q. You knew, then, that answer was false, did you not?

A. Well, I didn't know. I knew it wasn't quite

right, or correct, because I knew that Mr. Teghtmeier had gone down and just as the rest of us did.

Q. "Q. Have claimant and family resided continuously on the homestead since first establishing residence thereon? A. He has made it his continuous residence excepting what time he has been off for a little while. He is married. Family resided with him." Is that true or untrue?

A. No, that was not true.

Q. And at whose request or suggestion did you make such an answer as that?

Mr. Hall: If the court please, I object to this form of question. Counsel is assuming that someone requested or suggested that he make such an answer, and that is not the proper question. It is leading and suggestive, and the witness is led into saying that someone suggested it. The proper question would be to ask whether anybody suggested it.

Court: Did you give those answers of your own volition or did someone request you to?

A. No, that was the understanding. Now the fact of the case in regard to all of these is this: Every man of the old soldiers felt that they were entitled to a claim without even residence, as far as that is concerned. They never had availed themselves of the privilege of taking up a claim from the Government; and by their reasons of service they felt as if they were entitled to a claim somewheres, somehow and some way, without any residence.

Court: Without any residence?

A. Without any residence. That is the way we all felt.

Court: Not even one year?

A. Not even one year. That was our understanding years ago, that we should have a claim, and they all felt that they were entitled to a claim some way, somehow, and somewheres. And there wasn't anything—there was nothing in our minds at that time that was any fraud committed at all in regard to getting a claim.

Court: Well, the question was a plain question as to whether they resided there.

A. That question is they did not reside there only they visited the claim. It is no use to mince words or anything about it. That is all there was to it. Some of them went down there and stayed there a while for pleasure.

Q. The inquiry is, were these claims taken up as homes?

A. As homes?

Q. Were they taken up as homes?

A. They was taken up—no, they wasn't taken up as homes, but yet they could have them if they wanted them.

Q. But they were not taken up originally as homes, were they?

A. No, they was not.

Q. The next answer, then, as to the form of these answers to these questions propounded by

the Land Office, who suggested it? Was it you, of your own volition, suggested these answers, or did someone else suggest the form of answers to you?

A. Well, I don't remember how that was.

Q. Well, would you say that you voluntarily, of your own volition made these answers as they are stated here?

A. I won't say whether I did or did not.

Q. You also testified as a witness in the criminal case about these matters, did you?

A. I did.

Q. I will ask you if you didn't at that time testify to the following effect:

Court: What are you trying to do now—impeach this witness?

Mr. Goldstein: I think, if the court please, the witness here is naturally somewhat adverse.

Court: He doesn't seem to be adverse. He seems to be very candid.

Mr. Goldstein: To show wherein the things were testified a little differently at the former trial. Of course, if the court feels we are not entitled to it—

Court: Were you taken by surprise by his answers here?

Mr. Goldstein: Yes, with respect to that particular answer.

Court: I don't think you can introduce that testimony as testimony here. Of course, if you have been taken by surprise, and he has testified here

differently from what he did there, you can refresh his memory.

Mr. Goldstein: We won't press it, your Honor.

Q. This question: "Q. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence? A. About three months each time. For the purpose of making a living. No, his family went with him. They could not stay down there. Q. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon? A. Something over an acre. Raised crops one season. Q. What improvements are on the land, and what is their value? A. House 14x16 feet. House is log house, some apple trees planted and about two miles of roadway cut into his place. Value from $250 to $300. Q. Are there any indications of coal, salines or minerals of any kind on the homestead? If so, describe them, etc. A. Nothing that I have ever seen. Q. Has the claimant mortgaged, sold, or contracted to sell any portion of said homestead? A. Not that I know of." Was that a true answer?

A. Let me see that. There is something there I don't know anything about. I don't know. There is lots of stuff in there that I don't know anything about.

Q. Was that a true answer?

A. No.

Q. Who suggested, if anyone, that answer?

A. I don't know anything about it; don't remember anything about that. I didn't know that I was one of his witnesses.

Q. "Q. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry? A. No. I do." Apparently with reference to the question of good faith.

A. I do, that is according to my views in regard to the claim, as far as getting possession of the land.

Q. Do you believe that this man acted in good faith in perfecting this entry as his home?

A. Not as laid down. He acted in good faith in getting the money, as far as that was concerned.

Q. Acted in good faith in getting the money?

A. Yes, because he believed that he was entitled to it.

Q. Acted in good faith in getting the money from whom?

A. From Mr. Jones and Mr. Potter.

Q. Is this your signature, Mr. Wells?

A. Yes, that is mine. Mr. Gannon was out there quite—several times.

Mr. Goldstein: I offer this in evidence.

Marked "Government's Exhibit 3."

4-369

HOMESTEAD PROOF—TESTIMONY OF WITNESS.

John L. Wells, being called as witness in support of the homestead entry of Anthony Gannon for E½ W½ Sec. 11, 9 S., 10 W., testifies as follows:

Q. 1. What is your name, age, and postoffice address?

A. John L. Wells; 53 years, Siletz, Oregon.

Q. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

A. I am.

Q. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

A. No.

Q. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal or mineral land?

A. It's timber and agricultural land—if the timber was off it would be farming and grazing land.

Q. 5. When did claimant settle upon the homestead and at what date did he establish actual residence thereon?

A. Either last September or 1st of October, 1900—at the same time.

Q. 6. Have claimant and family resided continuously on the homestead since first establishing

residence thereon? (If settler is unmarried, state the fact.)

A. He is single. He has made it his home.

Q. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

A. I presume 60 days or more at different times he was off at work.

Q. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

A. A little over an acre—in fence; one season.

Q. 9. What improvements are on the land, and what is their value?

A. A house 12x14—a road cut—fruit trees about 20—a road of 2 miles cut to the claim—garden—value about $300.

Q. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

A. Nothing of the kind I know of.

Q. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

A. No, not to my knowledge.

Q. 12. Are you interested in this claim; and do

you think the settler has acted in entire good faith in perfecting this entry?

A. No. I do.

(Sign plainly with full christian name) John L. Wells.

I HEREBY CERTIFY that the foregoing testimony was read to the witness before being subscribed and was sworn to before me this 25th day of November, 1901, at my office at Oregon City, in Clackamas County, Oregon.

CHAS. B. MOORES,
Register.

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

U. S. District Court,
District of Oregon.
Filed Dec. 12, 1918. G. H. Marsh, Clerk.

4-369

HOMESTEAD PROOF—TESTIMONY OF WITNESS.

Franklin Hummel, being called as witness in support of the homestead entry of Anthony Gannon, H. E. 13087, testifies as follows:

Q. 1. What is your name, age, and postoffice address?

A. Franklin Hummel; 57 years. Siletz, Oregon.

Q. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

A. I am.

Q. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

A. It is not.

Q. 4. State specifically the character of this land—whether it is timber, prairire, grazing, farming, coal or mineral land?

A. It's farming land, with some timber on it.

Q. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

A. About September, 1900. At the same time.

Q. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

A. He is unmarried and has made the land his home.

Q. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

A. He has never been absent but he has gone off to work for short periods not to exceed 3 months at one time.

Q. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

A. Over an acre. One season.

Q. 9. What improvements are on the land, and what is their value?

A. A house—1 acre fenced—20 fruit trees. Garden—2 miles of road—value $150 to $200.

Q. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

A. Not that I know of.

Q. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

A. Not that I know of.

Q. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

A. No. Yes, I do.

(Sign plainly with full christian name.)

His

Franklin X Hummel.

Mark

Witnesses:

Thad S. Potter

Mina Kelly

I Hereby Certify that the foregoing testimony was read to the witness before being sub-

scribed and was sworn to before me this 25th day of November, 1901, at my office at Oregon City, in Clackamas County, Oregon.

CHAS. B. MOORES,
Register.

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

U. S. District Court,
District of Oregon.
Filed Dec. 12, 1918. G. H. Marsh, Clerk.

Court: Whose claim is that?

Mr. Goldstein: Anthony Gannon, one of the entrymen in this case, Government's Exhibit 3, being the testimony of John L. Wells as a proof witness to the homestead application of Anthony Gannon.

Q. With reference to Question 6: "Q. Have claimant and family resided continuously on the homestead since first establishing residence thereon (if settler is unmarried state the fact). A. He is single. He has made it his home." At whose suggestion did you give that answer, do you recall?

Mr. Hall: If the court please, same objection. Counsel is assuming that someone suggested these

things. There is nothing in his testimony to show that.

Q. Was it of your own volition that you made this answer?

A. I don't remember anything about Gannon. Gannon was footloose, and my impression is he went down there quite frequently, if I remember right. I don't know anything about it.

Q. Is this your signature, Mr. Wells?

A. Yes, that is mine.

Q. To save time, I will ask you these too.

A. Yes.

Mr. Goldstein: I offer in evidence the testimony of John L. Wells as proof witness to the nomestead application of Edward C. Brigham, Richard D. Depue and Benjamin S. Hunter.

Same objection, incompetent, irrelevant and immaterial.

Objection overruled. Exception allowed.

Marked "Government's Exhibits 4, 5, and 6."

Government's Exhibit 4, being the testimony of J. L. Wells as witness in support of the homestead entry of Edward C. Brigham, Homestead Entry No. 13137, and upon Government Form 4-369, wherein witness testified that the claimant settled on the land about the 1st of October, 1900, and established actual residence the same date; that he was a married man, and that he and his family had been off the land occasionally but that had been their home; that they had been absent temporarily for periods

not to exceed 90 days at one time; he was then at work earning a living, and that about 1½ acres of land was cleared and raised crops thereon one season.

And also on the reverse side being the testimony of Benjamin Hunter on behalf of the said Edward C. Brigham, testifying substantially as the other witness.

Said Exhibit 4 being substantially the same as Exhibit No. 3.

Government's Exhibit 5, being the testimony of John L. Wells, as witness in support of homestead entry of Richard D. Depue, on Government Form No. 4-369; and also on the reverse side being the testimony of Oliver I. Conner on behalf of the same claimant, who testified substantially as in Exhibit No. 3.

Government's Exhibit 6, being the testimony of J. L. Wells, as witness in support of homestead entry of Benjamin S. Hunter, Homestead Entry No. 13135, and on Goverament Form 4-369; and on the reverse side being the testimony of Edward C. Brigham in support of the claim of entryman Benjamin S. Hunter, and said exhibit being substantially the same as Exhibit No. 3.

Q. Did you at any time have any talk with Mr. Jones or Mr. Potter concerning the answers to be given to the questions propounded to you as a proof witness?

A. Yes, Mr. Potter was the spokesman mostly

all the time. He had them filled out there, and I signed them as witness.

Q. Who filled them out—that is, the handwriting of the answers, do you remember?

A. I think there was a young lady there in the office.

Q. Whose office?

A. At the Land Office.

Q. And was Mr. Potter present when the questions were propounded to you?

A. I think he was. He was in—

Q. Did you discuss with him concerning the nature of the answers to be given?

A. No, I didn't.

Q. Had you previously discussed it with him?

A. No.

Mr. Hall: Objected to as leading.

Q. You proved up on your own claim, did you, Mr. Wells?

A. I did, yes. I rather commuted it.

Mr. Goldstein: In order to save time, I offer in evidence certified copies of the record of patent issued to J. L. Wells, certified by the recorder of the General Land Office.

Marked "Government's Exhibit 7."

Government's Exhibit No. 7, being an exemplified copy of the originals in the files and record of the patent issued to John L. Wells and his commutation to the South ½ of the SE¼ and Lots 1 and 2, Sec. 10, and the NE¼ of NE¼ of Sec. 15, in Twp.

9 S., R. 10 W. of W. M., containing 164.12 acres; the said exhibit consisting of the certificate of the Acting Recorder of the General Land Office; the application of Frank Slade to contest said claim against the said John L. Wells; the letter of Algernon S. Dresser, Register of the Land Office, addressed to the Hon. Commissioner of the General Land Office, Washington, D. C., dated October 13, 1906; the authorization by Frank Slade to J. W. Draper to appear and act as his attorney in said contest, dated September 11, 1906; waiver of Frank Slade to any further claim in said lands, dated November 23, 1906, executed before J. W. Draper, Notary Public for Oregon; letter of Algernon I. Dresser, Register of the Land Office, Portland, Oregon, to Commissioner of the General Land Office, dated November 23, 1906; Receiver's duplicate receipt issued to John L. Wells, by Wm. Galloway, Receiver, for the sum of $16, being the amount of fee and compensation of Register and Receiver for the entry of the S½ of SE¼ and Lots 1 and 2, Sec. 10, and the NE¼ of NE¼ of Sec. 15, Twp. 9 S., R. 10 W., W. M.; receipt of Wm. Galloway issued to John L. Wells October 1, 1900, for $5.15, for 4.12 acres of land, being the excess acreage in said claim; non-mineral affidavit of John L. Wells executed before Chas. B. Moores, Register of the Land Office on the 1st day of October, 1900; affidavit of John L. Wells as to loss of certificate of discharge from military service of the United States, and statement that he was mus-

tered into military service of the United States September 4, 1864, in Co. "C," 6th W. Va. Inf., Captain Josiah H. Bee, and was mustered out on June 10, 1865, at Wheeling, W. Va., subscribed and sworn to before Chas. B. Moores, Register of the Land Office; affidavit of John L. Wells as to citizenship and honorable discharge from the United States service and good faith of application for homestead, being on Government Form 4-065, subscribed and sworn to before Chas. B. Moores, Register of the Land Office, October 1, 1900; application of John L. Wells to enter under provisions of the Act of June 8, 1872, the S½ of SE¼, and Lots 1 and 2 of Sec. 10, the NE¼ of NE¼ of Sec. 15, Twp. 9 S., R. 10 W. of W. M., certified to by Chas. B. Moores, Register of the Land Office; Receiver's duplicate receipt No. 13090, issued to John L. Wells in the sum of $16, being amount of fee and compensation of Register and Receiver for the homestead application of said John L. Wells, signed by Wm. Galloway, Receiver; notice of application of John L. Wells to the United States Land Office at Oregon City, Oregon, to make final proof on Monday, the 26th day of May, 1902, and the designation by the Register of the newspaper in which said notice should be published; copy of notice and certificate of publication, sworn to by publisher; certificate of posting of notice of time and place of takin final proof, by Chas. B. Moores, Register; affidavit of John L. Wells, of Siletz, Oregon, apply-

ing to enter homestead, on Government Form 4-102, subscribed and sworn to on May 26, 1902, before Chas. B. Moores, Register; non-mineral affidavit of John L. Wells on Government Form No. 4-062, subscribed and sworn to by John L. Wells, before Chas. B. Moores, Register of the Land Office; affidavit of John L. Wells on Government Form No. 4-069, that he made settlement on said land in August, 1900, and since said date has built a house on said land, continued to reside thereon to the present time; that he had broken and cultivated nearly 2 acres of said land; that no part of said land has been alienated,—subscribed and sworn to by said John L. Wells before Chas. B. Moores, Register of the Land Office, on May 26, 1902; cross-examination by Special Agent C. E. Loomis, of John L. Wells, as follows:

Q. Are you the person who made H. E. No. 6837 for the S½ of SE¼ and Lots 1 and 2, Sec. 10, and NE¼ of NE¼ of Sec. 15, Twp. 9 S., R. 10 W., W. M.?

A. Yes.

Q. What is the date of your entry?

A. October 1, 1900.

Q. When did you establish your residence thereon?

A. I commenced residence and improvements there August 26, 1900, before making the entry.

Q. Are you married or single?

A. I was single when I made entry. I was married in March, 1901.

Q. How much time since entry have you actually lived upon the land?

A. Between the date of entry, viz: October 1, 1900, and the present time, I have been there five times, remaining there each time from one to two weeks.

Q. Why have you not spent more time upon the claim?

A. I had to go away to get my living as I could not get a living on the claim and have to earn my living. I am an insurance agent and have been attending at the local office in Portland upon this business, and thus only temporarily absent from my claim for this purpose. I do not own any home anywhere except on this claim. My wife was there with me in August, 1901, remaining there with me two weeks. It is impossible for us to remain steadily upon the tract in its present condition and we have done the best we could to fulfill the law and at the same time earn a living for ourselves.

Testimony of witness William Teghtmeier in support of the homestead entry of John L. Wells, on Government Form 4-369, and testimony of George West to same claimant; testimony of John L. Wells, claimant; final affidavit required of homestead claimant, subscribed and sworn to by John L. Wells before Chas. B. Moores, Register, May 26, 1902; receipt issued by Wm. Galloway, Receiver of

the Land Office to John L. Wells, for $240, being in full for the S½ of SE¼, and Lots 1 and 2 of Sec. 10, and the NE¼ of NE¼ of Sec 15, Twp. 9 S., R. 10 W. of W. M., containing 164.12 acres; receipt to John L. Wells, by Wm. Galloway, Receiver, for $5.15, for excess acreage; certificate of purchase of John L. Wells, issued by Chas. B. Moores, Register of the Land Office, dated May 26, 1902; memorandum of cash entry of John L. Wells; copy of patent from the United States to John L. Wells for the S½ of SE¼ and Lots 1 and 2 of Sec. 10, and the NE¼ of NE¼ of Sec. 15, Twp. 9 S., R. 10 W., of W. M., containing 164.12 acres, signed by T. Roosevelt, President, by F. W. McKeen, Secretary, and C. H. Brush, Recorder of the General Land Office, and dated October 12, 1903.

Q. You say you commuted your claim, did you?

A. Yes.

Q. And how much did you pay to the Land Office for your commutation?

A. Paid Government price. I think it was $1.25.

Q. $1.25 an acre?

A. Yes.

Q. $1.50 an acre, wasn't it? $240.

A. $240, I guess that is right.

Q. Who furnished the money with which to commute?

A. Mr. Jones.

Q. What did you do with your land after you got your title?

A. I sold it to Mr. Jones for $200.

Q. And was that the understanding you had in the beginning, that you were to do that?

A. That was the understanding, sir.

Q. In addition to these entrymen, do you recall any of the other soldiers now that you secured to enter into contracts, or make final proofs, or file on the land?

A. You have the names of all of them right there.

Q. Beg pardon.

A. I say you have the names of all of them.

Q. Do you recall any others in addition to these entrymen that you followed out the same plan?

A. No, I don't recall any others only those I filed.

Q. Were there more than these eight or nine?

A. No. Oh, yes, there was quite a number of others. I don't know who the nine are that you have got there.

Q. Well, these are the nine: Hunter, Conner, Teghtmeier, Depue, Gillis, Johnson, Brigham, Gannon and yourself. Those are the nine.

A. Only three of them are alive.

Q. Well, I mean, were there any others in addition to these nine?

A. Oh, yes, there was quite a number of others.

Q. Was the same plan of action followed with

respect to those as was followed with respect to these nine?

A. Just the same.

Q. Do you remember any of the names of any of the other soldiers?

A. Yes.

Objected to as immaterial.

Objection overruled. Exception allowed.

A. I can answer that, yes. I can call—there was Pacquet, Morse, West, Clark, Rilea, Lawrence, Hummel. I see them all before me. I cannot call the others—I don't know.

Q. Longnecker?

A. Longnecker, yes.

Q. Paquet?

A. I called his name.

Q. Merrill?

A. Yes, Merrill. He is dead.

Q. Lanphier?

A. Yes, he is dead.

Q. West?

A. He is here.

Q. Everson?

A. Yes.

Q. Morse?

A. Yes.

Q. Marble?

A. Yes.

Q. Riggs?

A. Yes.

Q. Did you receive $5 apiece for each one of these?

A. I did.

Q. And who paid you for them?

A. Mr. Potter and Jones.

Court: Did these other persons get title to their land?

Mr. Goldstein: No, your Honor. They were contested. The Government stopped it before it went to patent. Contests were filed against them, and they didn't urge their claims—that is, these claims.

Court: Who filed the contests—private individuals?

Mr. Goldstein: Private individuals; and afterwards the Government cancelled them.

Q. Did you also secure filings for soldiers' widows?

A. I did.

Objected to.

Q. In accordance with this same plan or scheme?

A. No, that was different.

Mr. Hall: Objected to as wholly immaterial. The Government is not claiming anything for widows. It has no materiality in this case. They cannot go into a man's entire history for the purpose of showing things he has done in order to prove the intent in a subsequent transaction not connected with it.

Court: Were there any widows that filed?

Mr. Goldstein: Yes, your honor. One of them went to patent.

Court: And they had no right to file?

Mr. Goldstein: They had no right to file.

Mr. Hall: The Government is not claiming anything here by reason of widows' patents.

Mr. Goldstein: I propose to prove also that one of them went to patent, for which he appeared as proof witness in pursuance of this same plan and scheme.

Mr. Hall: Is that for the purpose of contradicting or impeaching your own witness?

Mr. Goldstein: No, merely for the purpose of putting in evidence the record of patent issued to soldier's widow which was secured from the Government by virtue of representations made to her at the request and instigation of the defendant, all in pursuance of the same general scheme.

Mr. Hall: We have had no notice of this, your Honor. There is no notice contained in the pleadings that these matters were to be gone into. We have not prepared any defense as against them, and it is not material.

EXAMINATION BY THE COURT.

Q. What was your understanding with Mr. Jones and Mr. Potter about getting these people to settle on this land? Did that include getting of widows as well?

A. Yes, without settlement.

Q. The widows were not to settle?

A. Without settlement, yes.

Q. You understood that?

A. Yes, I understood that, that it was without settlement.

Q. You understood the law did not require widows to settle?

A. Yes.

Court: I will allow this testimony, according to the same plan. You may have your exception.

Mr. Hall: We save an exception on the ground it is incompetent, irrelevant and immaterial.

EXAMINATION BY MR. GOLDSTEIN CONTINUED.

Q. What was the plan with respect to soldiers' widows as to what you were to receive?

Mr. Hall: I think counsel should fix the time now.

A. As to what I was to receive?

Q. Yes?

A. Just the same as the others—five dollars.

Q. Five dollars apiece?

A. Yes.

Q. Did you receive such sum?

A. I think I did, yes.

Q. From whom did you receive this money?

A. From Mr. Potter and Jones.

Q. And how many of these soldiers' widows did you secure?

A. I don't remember just how many.

Q. About how many, Mr. Wells?

A. I think there was six or eight, or something that way.

Q. You received five dollars apiece for each of them?

A. I think I did; that is, the ones that filed.

Q. Were the widows to sign a contract too?

A. Well, I don't remember about that. I presume they did, though.

Court: You presume—do you know?

A. Sir?

Court: Do you know whether they signed that contract?

A. Well, I don't know about that—about them. I think they might have. I presume they did, though. I rather think so.

Q. Well, I show you this form of contract, and ask you if that was the contract?

A. I presume this is the same form as the others.

Q. With respect to the soldiers' widows?

A. That is the same form as the others, anyway. It is only changed—

Court: Mr. Wells, from whom did you get your understanding as to the law concerning these matters?

A. I got it from Mr. Potter. He was an attorney.

EXAMINATION BY THE COURT.

Q. He advised you about it?

A. He advised me largely, yes.

Q. You didn't yourself look up those matters for your own advice?

A. No, I didn't. I got most of that from Mr. Potter, as he understood the land laws as a rule, generally supposed.

Mr. Hall: If the court please, we object to the introduction of the alleged form of contract offered by the Government in evidence, for the reason heretofore stated, and for the further reason that the contract does not purport to be between any persons and this defendant, but between a blank person and Thad S. Potter.

Mr. Goldstein: That is merely the form of contract. We don't say there was such a contract entered into. That is the form of contract that was entered into with the soldier's widow.

Mr. Hall: If this is the form of contract, then it is not admissible. Thad S. Potter is printed in the contract.

Mr. Goldstein: I might say I want to follow this up by the deposition of Potter, to show Potter was acting for Jones all the time.

Court: You will have to connect it up. I will admit it with that understanding.

Mr. Hall: Save an exception. Are you going to read the form of contract?

Mr. Goldstein: No, not now.

Mr. Hall: You must read it while the witness is on the stand.

Mr. Haney: I don't think that is the rule of the federal courts.

Mr. Hall: Either that or counsel should have opportunity to read it. I have never seen it.

Marked "Government's Exhibit 8."

Mr. Goldstein: I will give it to you, but I will read it here just the same. (Reads Exhibit 8.)

THIS AGREEMENT, made this .... day of ....., 1900, between ....., of Portland, Oregon, the party of the first part, and Thad S. Potter, the party of the second part, WITNESSETH:

That Whereas, the party of the first part is entitled to the benefits of the Act of Congress of June 8th, 1872 (Sec. 2307, Revised Statutes), giving homesteads to honorably discharged soldiers and sailors, their widows and orphan children, and desires to avail herself of the privileges therein granted by taking a homestead claim, and the party of the second part is in the possession of information relative to the existence of public lands within the State of Oregon subject to such entry;

Now, therefore, the party of the second part, in consideration of the covenants and agreements on the part of the party of the first part hereinafter stipulated to be kept and performed, hereby agrees to give to the party of the first part information which will enable her to locate and file a homestead claim upon 160 acres of the public lands of the United States, situated within the State of Oregon, and the party of the first part hereby agrees to pay

to the party of the second part as compensation for such information, and for his services to be performed in the preparation of the papers and affidavits necessary to be prepared and used in making such filing, the sum of $150, to be paid at the time and in the manner hereinafter designated.

The party of the first part further agrees to employ, and does hereby employ the party of the second part to cultivate the land to be taken up under the foregoing agreement, or so much thereof as is required, and for time required by the laws of the United States in order to perfect title thereto, and to pay the said party of the second part therefor the sum of $250, to be paid at the time and in the manner hereinafter designated; and the said party of the second part hereby accepts such employment, and agrees to do and perform, or to cause to be done and performed, all work and labor necessary to be done and performed upon said premises in order to comply with the laws of the United States.

The party of the second part hereby agrees to advance to the party of the first part, if required, the amount of fees required at the U. S. Land Office in order to make and perfect such filing; and all necessary expenses of the party of the first part in connection therewith, not to exceed the sum of $40, and the party of the first part agrees to repay to the party of the second part

all sums of money so advanced at the time and in the manner hereinafter designated.

The party of the second part further agrees that after final proof shall have been made upon said claim he will, at the option of the party of the first part, procure for the said party of the first part a loan, not to exceed the sum of $640, to be secured by first mortgage upon said claim, and immediately upon procurement of such loan, all sums of money herein stipulated to be paid to the party of the second part by the party of the first part under the terms of this agreement, together with all sums of money advanced to the party of the first part by the party of the second part under the terms of this agreement, shall become due and payable, and shall be paid out of the loan so secured; and it is further understood and agreed by and between the parties hereto that the payment by the party of the first part to the party of the second part of all sums of money hereinbefore designated, shall be conditional upon the procurement by the party of the second part of the loan hereinbefore mentioned, if the same shall be required.

In case the party of the first part shall not desire to avail herself of the loan hereinbefore mentioned, then, and in that event, all money advanced to the party of the first part by the party of the second part under the terms of this agreement, together with all sums of money hereby

agreed to be paid to the party of the second part by the party of the first part, shall become due and payable as soon as final proof shall have been made upon said claim.

WITNESS our hands the day and year first above written.

Witnesses:

U. S. District Court,
District of Oregon.
Filed Dec. 12, 1918.
G. H. Marsh, Clerk.

Mr. Goldstein: I will give it to you, but I will read it here just the same. (Reads Exhibit 8.)

Court: The only reason that the court admits this paper and the evidence with reference thereto in regard to the application of widows of old soldiers is to show the intent of the defendant in what he has done with regard to the cases that are on trial. Of course, those matters are not proof of the fact that is alleged in the complaint touching the settlement of these nine soldiers; but they may go in as showing with what intent the defendant, if he had any connection with them, induced these nine soldiers to file and settle upon this land.

EXAMINATION BY MR. GOLDSTEIN RESUMED.

Q. Mr. Wells, was one of these soldiers' widows that you secured Esther P. Collins, do you remember?

A. Yes.

Q. And what, if anything, did you say to her with respect to the land to be filed upon, as to how she was to secure title, and what was to be done with the land in pursuance of this understanding?

Same objection. Objection overruled. Exception allowed.

A. I don't just remember what I did say to her. It has been a long while ago, and you have my statement there directly after that, very probably near the facts of the case; but I don't remember. I can't remember just what I did say. But anyhow, I did say that, as I understood it, that they had no occasion to go to the land at all, according as I understood the law as interpreted to me, and that they would receive so much for their right by filing upon the land.

Q. They were to receive how much?

A. Well, I think you read there $150. I don't know.

Q. Who was to pay them that money?

A. Potter and Jones, the same as the others.

Q. And what were they to do with the land after they got title?

Mr. Hall: Objected to unless the witness knows something else than is contained in the contract which has been introduced in evidence, the form of contract. Unless he has an independent knowledge, I object to his testifying.

A. If I understand it correctly, it is this in regard to the mortgage. It made no difference whether it was a man or woman that gave the mortgage for the improvements of the land and the filings and everything that cost—the costs and the money they got—if they would take up that mortgage and pay the mortgage off they could keep the land, the land was theirs. I could have kept my land. Mr. Jones never asked me to deed the land over if I would pay my mortgage off. And I understand that was the understanding with all of them.

Q. What was the financial situation of all of these soldiers? Were they financially able to pay the mortgage, do you know?

A. No, but very few of them. There wasn't more than one or two or three of them.

Q. They were not financially able to do that?

A. No, sir; they wasn't at that time. At that time, those times were hard times when this was done.

Q. And all of the fees and expenses were all paid by whom?

A. As I have said before, by Jones and Potter —Potter and Jones.

Q. And that was done with reference to these old soldiers' widows as well?

A. Yes.

Q. The old soldiers' widows, did they advance any fees or expenses for the cultivation or improvement of the land?

A. No. No, they advanced nothing.

Q. And they did nothing, did they?

A. They did nothing.

Q. And the work in connection therewith was done by whom?

A. By Mr. Potter.

Q. You testified among the soldiers' widows was one Esther P. Collins.

Mr. Goldstein: I offer in evidence certified copy of the record showing the patent issued to Esther P. Collins.

Mr. Hall: Objected to as incompetent, irrelevant and immaterial.

Court: That is a patent issued by the Government?

Mr. Goldstein: Yes, your Honor.

Court: I don't think that patent has anything to do with this case. It doesn't show intent or purpose, or anything else. The application is the only thing that might show what intent or purpose was manifested by the defendant.

Mr. Goldstein: We have the application here.

Mr. Hall: There was no claim, as I understand it, that Mr. Jones ever got this land. It went to patent.

Court: You may have the application, but I don't think the patent has anything to do with it.

Mr. Goldstein: I would like to offer his evidence as proof witness to the proof of Esther P. Collins.

Court: You may do that.

Mr. Hall: I make the same objection to that, as incompetent, irrelevant and immaterial. It doesn't appear Mr. Jones ever acquired title to this land in question, and it doesn't tend to prove—any testimony of witnesses other than Mr. Jones doesn't tend to prove any intent on the part of Mr. Jones.

Objection overruled. Exception allowed.

Court: I do not think that whole record should go to the jury. You may put in the homestead proof and the application, but I do not think you can go further than that.

Marked "Government's Exhibit 9."

Government's Exhibit No. 9, being an exemplified copy of the originals in the files and record of the Patent Office of the United States in regard to the homestead entry of Esther P. Collins, to the SE¼ of Sec. 13, Twp. 9 S., R. 11 W., and containing receiver's receipt to Esther P. Collins dated August 17, 1900, for $16, signed by Wm. Galloway, Register; soldier's and sailor's homestead affidavit made by Esther P. Collins, before Chas. B. Moores, Register of the Land Office, subscribed and sworn to on the 20th day of July, 1900; affidavit of Esther P. Collins that she was the lawful widow of A. J. Collins, deceased, who served for more than 90 days in the Civil War, and that her said husband died April 8, 1892, subscribed and sworn to before Chas. B. Moores, July 20, 1900; affidavit of Esther P. Collins that since the 30th day of August, 1900,

neither she nor her husband had entered upon any lands of the United States, subscribed and sworn to before Chas. B. Moores, Register, July 20, 1900; certificate of John E. Bennett, Colonel, to the effect that the husband of Esther P. Collins was an honorably discharged soldier of the United States; also certificate of W. J. Hanson and W. M. Mills, ex-officers of the United States, to the same effect; non-mineral affidavit of John Eldred on behalf of Esther P. Collins, on Government Form 58622-7, subscribed and sworn to before T. S. Potter, Notary Public for Oregon, on the 12th day of July, 1900; application of Esther P. Collins to enter under the provisions of the Act of June 8, 1872, the SE¼ of Sec. 13, Twp. 9 S., R. 11 W., of W. M., certified by Chas. B. Moores, Register, dated July 20, 1900; receiver's receipt No. 12946, issued to Esther P. Collins for $16, by Wm. Galloway, Receiver, to the SE¼ of Sec. 13, Twp. 9 S., R. 11 W., of W. M., dated August 17, 1900; certificate of posting of notice, on Government Form 4-227, signed by Chas. B. Moores, Register; notice of intention to make final proof, by Chas. B. Collins, one of the heirs of Esther P. Collins, deceased, to the SE¼ of Sec. 13, Twp. 9 S., R. 11 W., signed by Chas. B. Collins, with the designation of the newspaper in which said notice should be published, signed by Chas. B. Moores, Register; affidavit of Chas. B. Collins, of the death of Esther P. Collins, subscribed and sworn to before Chas. B. Moores, Register, on the 23d day of De-

cember, 1901; affidavit required of claimants, made by Chas. B. Collins, before Chas. B. Moores, Register, on Government Form 4-069, dated December 23, 1901; certificate of publisher of "County Leader," a newspaper, of publication of notice of intention to make final proof, subscribed to before B. F. Swope, Notary Public, December 23, 1901; also notice of publication attached thereto; non-mineral affidavit of Chas. B. Collins on Government Form 4-069, before Chas. B. Moores, Register of the Land Office; copy of Sec. 5392, Revised Statutes of the United States; homestead proof, testimony of John L. Wells in support of enter of Esther P. Collins, Homestead Entry No. 12946, who testified that Esther P. Collins did not reside upon the land but had it cultivated; that she was absent all the time, had cleared about one acre and raised crop one season; that about one acre had been cultivated and fenced and two or three miles of good trail and small orchard; on the reverse side of said Form being the testimony of Bert Blauvelt to the same effect. Testimony of claimant Chas. B. Collins, as one of the heirs of Esther P. Collins, deceased, who testified that there was no house on the land, about 1½ acres of land cleared and fenced, three or four miles of good trail, and orchard, valued at about $200; that he had been absent from the land all the time; on the reverse side of Form being the affidavit required of homestead claimants. Receipt issued to Chas. B. Collins by Wm. Galloway, Receiver, in the

sum of $200, being in full for the SE¼ of Sec. 13, Twp. 9 S., R. 11 W., containing 160 acres of land, at $1.50 per acre; certificate of Chas. B. Moores, Register, dated December 23, 1901, of the purchase by the heirs of Esther P. Collins of the SE¼ of Sec. 13, Twp. 9 S., R. 11 W., of W. M., at $1.50 per acre. Patent issued to the heirs of Esther P. Collins to the SE¼ of Sec. 13, Twp. 9 S., R. 11 W., of W. M., containing 160 acres, executed by the President of the United States.

Q. What hotel did the soldiers stop at when you visited the land there, do you recall, Mr. Wells?

Mr. Hall: Which land do you refer to now?

Mr. Goldstein: The Siletz land, of course.

A. How is that?

Q. What hotel did you stop at, or have the soldiers stop at?

A. At the Toledo Hotel, when we went down.

Q. And who paid the expenses at the hotel for stopping there, lodging and eating there?

Mr. Hall: This all goes in over our objection.

A. It generally was paid by the man that went down with them.

Mr. Hall: I would like to have it understood, your Honor, that this goes in over our objection and exception.

Court: Yes, you may have your objection and exception as to all of this kind of testimony.

Q. What is the answer to that, Mr. Wells?

A. It came from the same source as all of them did—Potter and Jones.

Q. And from the hotel, how did the soldiers get out to visit their claims?

A. There was a man that had a livery stable there that took us out.

Q. How is that?

A. A man had a livery stable.

Q. Who furnished the team or the conveyance?

A. Well, the livery man.

Q. Who paid for it?

A. Potter and Jones.

Q. Who paid for the grub while you were out there at the headquarters' camp?

A. Potter and Jones.

Q. Who showed the soldiers where their respective claims were?

Mr. Hall: Soldiers or soldiers' widows?

Q. Soldiers.

A. Why, I don't know. The men is here as a witness who were down there doing the work. They showed them the claims.

Q. Who was he working for, do you know?

A. They was doing the work.

Q. For whom?

A. Potter and Jones.

Q. With respect to the cabins that were on these claims, was there any door in these cabins?

A. Yes.

Q. What kind of a door?

A. I believe some of them were made out of lumber, hung by hinges, boards.

Q. Was there anything there in the way of furniture?

A. Nothing only a bunk.

Q. Any holes there for stove pipe?

A. I don't remember.

Q. How would the soldiers be notified as to the time to visit these claims?

A. How were they notified?

Q. Yes.

A. I think that I notified most of them.

Q. At whose request?

A. At Potter and Jones.

Q. What, if anything, did either of them tell you as to what to say to these soldiers?

A. I didn't quite catch the question.

Q. What was the conversation you had with Jones or Potter as to the notification to be given to these soldiers?

A. Well, there was no conversation.

Q. What did he tell you to tell these men?

A. Tell them we had to go down to the claims a certain date—to be ready.

Q. What, if anything, was said between you as the expenses for the trip?

A. Nothing at all.

Q. Well, who paid the expenses?

A. When I went down alone with them, why,

they generally handed me the money to pay the expenses.

Q. To whom were the hotel bills given?

A. They were given to the man that went down as the leader, like.

Q. You were the leader of several of these trips?

A. Two or three of them, I was.

Q. And when these bills were furnished to you, what did you do with the bills?

A. I paid the bills.

Q. Did you make an accounting to Mr. Jones?

A. I did.

Q. Or Mr. Potter?

A. I did.

Q. And were reimbursed?

A. I did.

Q. How often would you make an itemized account to him?

A. Every time I went down.

Q. Who purchased the railroad tickets?

A. I think that Mr. Potter always got the tickets. I think so. I won't say positive about that.

Q. I show you these, and ask you if this is your signature to these proofs?

A. Yes, they look like my handwriting.

Mr. Goldstein: I offer in evidence the testimony of John L. Wells as proof witness to the final proof made by Franklin Hummel, George West, George Rilea, Nelson B. Smith, and Henry Marble, old soldiers whom the witness has already testified

to as being included among the number of others that he induced to enter into contracts in pursuance of this general plan or scheme.

Marked "Government's Exhibits, 10, 11, 12, 13 and 14."

Government's Exhibit No. 10, being homestead proof of Henry Marble, homestead entry No. 13599, and being the testimony of John L. Wells on blank form 4-369, subscribed and sworn to before George W. Bibee, Receiver of the Land Office, at Oregon City, Oregon, on the 23d day of August, 1902. On the reverse side being the testimony of Menzo J. Morse, for the same claimant, and subscribed and sworn to before the same officer on the same date.

Governments' Exhibit No. 11, being the testimony of John L. Wells to the homestead proof of Nelson B. Smith, on Government Form 4-369, to the NW1/4 of Sec. 13, Twp. 9 S., R. 11 W., of W. M., and subscribed and sworn to on the 25th day of November, 1901, before Chas. B. Moores, Register of the Oregon City Land Office. On the reverse side of said exhibit being the testimony of Richard D. Depue, on behalf of the same claimant, and duly subscribed and sworn to before the same officer on the same date.

Government's Exhibit No. 12, being the testimony of John L. Wells to the homestead proof of George Rilea, to the S1/2 of NW1/4, and the N1/2 of SW1/4, of Sec. 10, Twp. 9 S., R. 10 W., of W. M.,

and being on Government Form 4-369, subscribed and sworn to on the 4th day of November, 1901, before Wm. Galloway, Receiver of the Land Office at Oregon City, Oregon. On the reverse side of said exhibit being the testimony of William Teghtmeier, on behalf of the same claimant and duly subscribed and sworn to before the same officer on the same date.

Government's Exhibit No. 13, being the testimony of John L. Wells to the homestead proof of George West, for homestead entry No. 13406, which was duly subscribed and sworn to by John L. Wells on the 26th day of May, 1902, before Wm. Galloway, Receiver of the Land Office at Oregon City, Oregon. And on the reverse side of said exhibit being the testimony of William Teghtmeier for the same claimant, duly subscribed and sworn to before the same officer on the same date.

Government's Exhibit No. 14, being the testimony of John L. Wells as witness to the homestead entry of Franklin Hummel for homestead entry No. 13136, on Government Form 4-369, duly subscribed and sworn to by John L. Wells, on the 25th day of November, 1901, before Chas. B. Moores, Register of the Land Office at Oregon City, Oregon. On the reverse side of said exhibit being the testimony of Richard D. Depue, on behalf of the same claimant, duly subscribed and sworn to before the same officer on the same date.

Mr. Hall: Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Exception allowed.

CROSS EXAMINATION.

Questions by Mr. Hall:

Q. You say you have lived in Oregon about thirty years, Mr. Wells?

A. About thirty-two years.

Q. And where did you live prior to coming to Oregon?

A. Kansas.

Q. Is that your native state?

A. No. Virginia.

Q. How long did you live in Kansas?

A. About eighteen years. I went there in 1867.

Q. Went there in 1867?

A. Yes.

Q. Of what state are you a native? What state were you born in?

A. West Virginia.

Q. You say you served in the Army of the Rebellion?

A. Yes, 6th West Virginia.

Q. And how long did you serve in the army?

A. Well, I was a little less than a year in one regiment, and something more than a year in another.

Q. How long altogether do you say?

A. A little less than a year in one and about

eighteen months in what is called the Virginia Militia.

Q. And you have got an honorable discharge?

A. I have, sir.

Q. And are a member of the Grand Army of the Republic?

A. I am.

Q. When was that organized?

A. Well, I dont' know. I belonged to it before I came here thirty-two years ago. I belonged to a Post in Emporia, Kansas, on the organization of that Post. I was one of the charter members of it, No. 55.

Q. Now, after the war was over, there were certain provisions made, were there not, by the Government of the United States favorable to the old soldiers getting land?

A. That was my understanding, yes.

Q. Well, as a matter of fact, didn't you know that land scrip in some instances was issued to old soldiers, where they could go and take land without settlement or residence?

A. That was the common understanding among the old—the soldier boys—men—that they was entitled to 160 acres of land without residence.

Q. That was the general belief amongst the old soldiers?

A. That was it.

Q. That for their services in the war they were entitled to at least 160 acres of raw land. Now, I

will ask you whether or not that idea wasn't, your idea of that wasn't got from your associates in the Grand Army men and with the old soldiers themselves?

A. That was generally talked among the old soldiers, that they ought not to be required to make settlement on the land.

Q. And you understood that and believed that before you came to Oregon?

A. I did.

Q. Now, I will ask you whether or not it wasn't also understood by the old soldiers that in the taking up of any homestead under the Homestead Law, that they would be allowed their time of service in the army to be deducted from their time of residence?

A. We understand that is the law, yes.

Q. Under the Homestead Act?

A. Under the Homestead Act.

Q. Yes. Now, when you lived in the State of Kansas, was there or was there not a considerable amount of Government land opened for settlement in that state?

A. Most all of the western part of Kansas opened up for land.

Q. And while living in Kansas, did you become in any way familiar with the manner of settlement by homesteaders upon Government land?

A. Somewhat.

Q. And I will ask you if it was not a fact that

it was generally believed by the people taking up Government land, and generally understood, that if a man visited his homestead every six months, or in other words, was not absent for more than six months, that he was complying with the law?

A. That was the way it was where I lived in Kansas. They visited their claim once in six months. That was always considered lawful and legal.

Q. And when you came to Oregon thirty-two years ago, there was a considerable quantity of Government land within the State of Oregon that was open to settlement as homesteads?

A. Yes.

Q. I will ask you whether or not, so far as you know, the same belief and the same practice existed in the State of Oregon as had in the State of Kansas with regard to settlement?

A. Well, I didn't take very much active interest in any of the land particularly until this matter came up, and I judged my reasons a great deal by what I had seen in Kansas in regard to the same procedure of obtaining a homestead; and as I seen and knew of them doing there, I thought the same procedure was about the same here, about visiting the claim once in six months, and that the old soldiers were entitled to their service.

Q. Entitled to their service, and that if a man went onto a piece of ground for the purpose of establishing a homestead, and built a house and es-

tablished a residence there, and didn't abandon it for—wasn't away from it for more than six months at a time, you believed that he had then complied with the law?

A. That was generally the understanding.

Q. And that was your belief?

A. That was my belief.

Q. Now, when the Siletz Reservation was opened for homestead settlement, did you know, or did you understand that there was to be any different rule as to residence, settlement and cultivation, than there was under the general Homestead Law?

A. I didn't understand so.

Q. And did you believe that in taking up those homesteads, if the old soldier complied with the law in the way that I have indicated, that he hadn't been absent from it for more than six months at a time, he would actually be complying with the law?

A. As I understood it. I want to distinctly state right here and now that I would not stoop to anything that would be a violation of the law, or would I endanger a comrade to taking up a claim that was in violation of a land law. I was honestly—what I did I did it honestly and with the intention of helping a comrade to obtain a homestead. I did it honestly, and without a thought of violating the land law in any way at all, whatever.

Q. Well, wasn't that true of all of those boys that went out in 1861?

A. As far as I know.

Q. So far as you know, are they not an honest, upright, straightforward class of men, as a rule?

A. As far as I know of, that was the concensus of opinion among them all.

Q. And how much have you been associated with them? Have you had any official capacity in the Grand Army?

A. No, nothing particularly, only being a member of it. I was one time the Adjutant General of the State Grand Army, and when this land fraud business came up, why, I resigned, because I thought it was causing a reflection upon the Grand Army.

Q. Now, in this question of settlement upon the Siletz Reservation, did you believe, and did these soldiers believe, so far as you know, that they lawfully had a right to deduct their terms of service in the Army?

A. Yes, sir.

Q. From their residence?

A. That was so stated to them, they had a right to deduct.

Q. And when the final proof was made at Oregon City, I will ask you whether or not that rule was not recognized by the Register and Receiver of the Land Office, and that they allowed each and every man, so far as you know?

A. As I understand it, they allowed it—allowed their service.

Q. Yes. They allowed it in your case, did they not? You commuted?

A. Yes, sir, I commuted.

Q. Now, you say the first knowledge that you had of this arrangement, was Mr. Potter called on you?

A. Yes, sir.

A. And that was some time in the summer of 1900, or when was that?

A. I think it was 1900 in the summer time.

Q. Well, the first arrangement, as I understand from your testimony, that you had with it was in regard to the widows?

A. Yes.

Q. Now, how long before that was it—how long did that precede the old soldiers' proposition, if you remember?

A. Oh, I think it was some months; not very many months.

Q. Would you say that it was as long as a year?

A. Well, it might have been. I dont' know. I don't just remember. I cannot call to mind how long it was.

Q. It might have been in the year of 1899?

A. It might have been 1899.

Q. Do you recall now whether or not you were not working them both at the same time, the widows and the old soldiers?

A. How is that?

Q. You were not endeavoring at the same time to get soldiers' widows and old soldiers, were you?

A. No, no soldiers.

Q. And did I understand you to say that you undertook to find the soldiers' widows for Mr. Potter?

A. At the first start, yes, sir.

Q. And isn't it a fact that that plan had been abandoned?

A. Yes.

Q. Prior to the taking on of the old soldiers' proposition?

A. Yes, sir.

Q. That had been abandoned?

A. Had been abandoned.

Q. And in regard to the old soldiers' widows, I will ask you whether or not you knew of any fraudulent intent on the part of any person therein?

A. As I stated before, a while ago, I will answer that question, I did not. For if I had known there was any intention of fraud, I never would have had anything to do with it, and neither would I have gone to my comrades to get them into something that was fraudulent. It never entered my mind, nor I presume did it enter their minds at the time; never no question about it. There was no talk about it being a fraud.

Q. Well, neither Mr. Potter nor Mr. Jones disclosed any fraudulent intent in the matter to you, did they?

A. Well, I didn't take it that way.

Q. No, you didn't so understand it.

A. I didn't so understand it.

Q. So far as you know, both Mr. Jones, as well as yourself, was acting in good faith in the matter of the soldiers' widows?

A. At least I thought they were, or I wouldn't have had anything to do with it.

Q. What is that?

A. I wouldn't have had anything to do with it if I hadn't thought so.

Q. Now, so far as you know, Mr. Jones carried out his contract with the soldiers' widows in accordance with the way he made it?

A. He followed them out.

Q. Beg pardon?

A. I say, he followed them out, yes, all right.

Q. Isn't it a fact that Mr. Jones told you that his interest in the matter would be his profit in his location fees and in the building of the house and doing the cultivation; that that was his interest in it?

A. Well, I don't remember. The only thing I do remember about it was going down there to the claims with some of the boys. I don't know.

Q. No; I am speaking of the widows.

A. Oh, the widows. That is all I know about it, yes. The profit on the—

Q. So far as those were concerned, that was the only interest that Mr. Jones had, so far as you

know, in his location fees, and the profit he would make in building the cabins and clearing the ground?

A. I think that was, if I remember right—there was something said in that way; but I just cannot recall what the statement was that was made then.

Q. There was no arrangement or agreement had with the widows, so far as you know, outside of this form of contract with the widows that had been introduced in evidence?

A. Nothing that I know of.

(Recess until 2 P. M.)

December 3, 1918. 2 P. M.

J. L. WELLS RESUMES THE STAND.

Q. Now, Mr. Wells, who was it first came to see you in regard to the old soldiers? Not the widows, but the old soldiers?

A. Mr. Potter.

Q. And over at your office on the East Side?

A. Yes, sir.

Q. Your office was on the East Side at that time?

A. Yes.

Q. And how many visits did he pay there, do you know?

A. How is that?

Q. How many times did he come over?

A. How many times he came over?

Q. Yes, how many times before you entered into this?

A. Oh, I don't know. It wasn't more than two or three times. I don't know whether it was that many or not.

Q. When he came over the first time, did he bring these proposed contracts that the old soldiers were to sign?

A. Yes, he did. He may not have brought them the first time, but the second time I think he did.

Q. And you went over them carefully?

A. I did.

Q. And then you undertook to look around amongst the old soldiers to find out who of them would be willing to enter into that kind of a contract?

A. I did.

Q. You presented the matter to them each one individually that afterwards signed up?

A. I did.

Q. And they each read the contract?

A. I think they did. I gave them to them, and I think they went over to Mr. Jones' office.

Q. And how much time ordinarily would they take before signing up—how long?

A. Oh, I don't remember just how long. It was not very long. Some of them maybe was longer than others.

Q. And that was in the year of about 1900, wasn't it, Mr. Wells. About 18 years ago or a little over?

A. It must have been about that time. Of

course, I don't remember just the date now; but I think it was 1900 or 1901, or something along in there.

Q. Now, you testified that you advised these old soldiers that they would only have to live on the land or maintain a residence for about a year, as I understand your direct testimony?

A. A year to 14 months, yes.

Q. What?

A. From a year to 14 months before they got title to the land, or proved up.

Q. That you believed to be the law regarding homesteads at that time?

A. Yes.

Q. Now, in that contract, as you understood it in the first place, Mr. Jones was to have for the locating of these old soldiers, finding the tract of land upon which they could homestead, a location fee of $185—something like that?

A. Whatever is in there. I don't know what is in it; don't remember.

Q. Well, he was to have pay for location fee?

A. Yes.

Q. And he was to build a cabin also?

A. Yes.

Q. And to do a sufficient amount of clearing and improvement on the place?

A. Yes.

Q. And was to advance the money for the pay-

ment of their expenses going to and from the claim; that is, if they desired it?

A. Yes.

Q. They might advance their own expenses or get it from Mr. Jones, as they saw fit? And if desired, he was to advance the fees, necessary fees, to the Land Office?

A. Yes.

Q. That is the way you understood it?

A. That is the way I understood, and that is the way he did most of them; I guess all of them.

Q. And they were to comply with the laws of the United States regarding perfecting their homestead claim, as provided in this contract?

A. The best they could, as I understood it.

Q. As they understood it?

A. Yes.

Q. You were to have, as you testified, five dollars for each old soldier that you produced that would enter into a contract and take up a quarter section?

A. Yes, sir.

Q. Now, you had no other duties to perform except that under your agreement with Mr. Jones, did you?

A. That is all I had. That is all that he desired.

Q. That is all that you were to do?

A. That is all.

Q. And all you were authorized to do, so far as Mr. Jones was concerned?

A. That is all.

Q. Now, at the time of the entering in of this contract, it was not only understood that Mr. Jones was to furnish this money, but when final proof was made and final certificate issued, he agreed to get them a loan or to get them $200 more upon their claims, did he not?

A. That was the understanding.

Q. And for that he was to have a mortgage which would make a total, if he advanced them all this money and the $200, of $720?

A. Yes.

Q. Well, now, was there any other agreement entered into between you and these old soldiers, to your knowledge, outside of the written agreement?

A. I don't remember of anything else, of any other agreement or understanding.

Q. There was no agreement?

A. There was an understanding.

Q. I don't want the understanding. I want the agreement. What was the agreement?

A. Well, I don't know about any agreement.

Q. There was no agreement, to your knowledge, between Mr. Jones and any of these old soldiers that they would have to deed him the land?

A. I don't think that they had to deed the land, and I don't know that there was any agreement that we should deed the land to him. We could pay the mortgage off, and hold the land.

Q. Yes; well, you had the option after Mr. Jones was through, of paying him back his money, didn't you?

A. Yes.

Q. Or if you could not pay back the money, you would give a mortgage?

A. Give a mortgage.

Q. On the land?

A. On the land.

Q. After you got final certificate? And then you could pay that mortgage off?

A. Pay it off.

Q. Or you could sell the land to whomsoever you saw fit?

A. Yes.

Q. There was no limitation upon you as to whom you should sell the land to?

A. No. I believe some of them did sell the land to other parties. Some of them did—got more money than $200. Some of them got $400, I understand.

Q. Yes, but as you understood the arrangement, they had a right to sell to anybody for such price as they saw fit?

A. That is the way I understood it.

Q. And when you referred to the $200 in your direct testimony, then you referred to the $200 loan that they were to get upon these premises? Is that correct?

A. Yes, that was a loan.

Q. Now, in this first place, you went over to the land, your first visit was to make the selection and locate your claims, was it not?

A. Yes, that was our first trip.

Q. And at that time there were no improvements upon the claim—upon your first trip?

A. I don't just remember whether there was or not, but my impression is there was not, only on one or two, maybe there was.

Q. Well, the law did not require you to make any improvements until after you had selected your claim?

A. No, I understand.

Q. You first went and made your selection, and after you made your selection, you went to Oregon City and made your filing?

A. Made the filing, yes.

Q. And then, within the six months from the date of making your selection and filing, you went back and visited the claim, and at that time you say there were cabins and some clearing and improvement made there?

A. Some little, yes, on some of the claims. They hadn't got over the whole of the claims.

Q. Now, you saw these cabins, did you?

A. I did. I saw most of them. I don't think I saw all of them.

Q. How did they compare with other cabins of settlers in that community?

A. Why, some of them compared favorably, and others did not.

Q. You would say the cabins were habitable?

A. Oh, yes; they were comfortable enough.

Q. They were log cabins?

A. Log cabins; shake covering—

Q. And counsel asked you whether there was any furniture in them. Mr. Jones didn't agree to furnish them?

A. No. There was no furniture in them.

Q. I will ask you whether or not, as a rule, they were not as good as other cabins in that vicinity by settlers that were there at that time?

A. I think probably they would average up with them. None of them were very good. But there were some on these claims was fairly good cabins. As I said before, there was some of them not so good, but there was some of them very good. I know there was some that was built up with cedar boards, shakes like, split out.

Q. They were not all log cabins?

A. I think there was one or two that was built up with cedar shakes, as they called them, split out; cedar split very nicely. It seemed to me there was one or two of them that way.

Q. Now, you say on some of these there was some land cleared and in cultivation on one of your visits?

A. There was some of them, yes.

Q. Anything growing there in the way of vegetables?

A. Yes.

Q. Grass?

A. Well, I don't know about the grass. I know there was some of them that was planted to vegetables, and some fruit trees—small, little fruit trees. I dont' think—there might have been grass, but I don't remember being sowed any. It would not be sowed in where there was turnips.

Q. Now, what kind of a cabin was there on your claim?

A. It was not a very good one. It was a log cabin. I think I have about the worst one that was on the claims. It was reasonably good enough to live in for a person to inhabit it, but it was not quite as good as some of the others, not by any means.

Q. And how much ground would you say was cleared on your claim?

A. Why, it was cleaned off very nicely; cleaned off and some fruit trees on it.

Q. Some fruit trees?

A. Yes.

Q. Was there anything planted—any vegetables, anything of that kind—potatoes?

A. Well, I think it was sowed down in turnips.

Q. In turnips?

A. Yes. The soil was very excellent for that purpose.

Q. How far was your claim, for instance, from a road, a wagon road, would you judge?

A. I don't know. I think it was about a mile and a half from where the wagons could come; maybe not. That is mine. But I was further away than some of the rest of them.

Q. You had to reach the land, then, by means of a trail?

A. By trail, yes.

Q. What kind of a country is it as to being level or hilly and broken?

A. It was not very bad, only part of it. Part of it was pretty rough, and then there was part of it was rather rolling, and down to where my claim was it was very loggy. Some places that there was heavy trees had fallen and it was very difficult to get over them. They were very large.

Q. And did Mr. Jones or someone in his behalf also cut a trail?

A. They cut the trail. They had a trail and a way to get over the logs

Q. Now, you visited your claim about how many times, Mr. Wells?

A. I was there three or four times. I dont' know just which it was. Four times, I think, to mine.

Q. Now, when you took the claim up you were a single man, weren't you?

A. Yes.

Q. And were you married during the time?

A. Yes.

Q. And did Mrs. Wells go with you over to the claim that you had?

A. She went down once.

Q. She went over once?

A. Yes.

Q. And proceeding as you did, were you in good faith endeavoring to comply with what you believed the law to be with reference to your taking a homestead claim?

A. I did. I felt that I was in the right.

Q. And you believed that the other old soldiers that you induced to go into this were doing the same thing, so far as you knew?

A. So far as I knew, I thought they was in the right.

Q. Now, the reason you went over there yourself was the fact that you had taken a homestead claim yourself over there?

A. Yes, sir.

Q. That was what took you over there?

A. Yes.

Q. And the first time Mr. Potter went over with you, and that was to show you where the land was that was vacant and could be taken up, was it not?

A. Yes.

Q. You could not have found the land without assistance from somebody that knew where it was, could you?

A. No, I could not have found it.

Q. Now, Mr. Jones or Potter never told you at

any time not to go out on the claims and not to live there, did they?

A. No.

Q. But you say that Mr. Jones did suggest, as I understand you, that you go over there and the old soldiers, that they should not remain away six months, or that it was time for them to go over? Did you so testify?

A. How is that?

Q. Did Mr. Jones at any time notify you that it was time to go over to your claim after the first filing?

A. Yes, he notified us. They notified us when to go over after the first time.

Q. So you would not be away more than six months at a time?

A. Six months. It was delinquent then.

Q. Now, I will ask you whether or not Mr. Jones didn't tell you in the outset that his interest in taking these claims consisted in getting his location fee and what profit he could make out of the building of the cabins and the clearing of the ground?

A. That his profit would be in the location fee and in building the cabins? Is that what I understand you to say?

Q. Yes.

A. I think there was something said. We talked the matter over, the question was asked where his profit would come in and Mr. Potter told me that

they expected to get a profit out of the location fee, or something that way, locating the old soldiers there, and the women. They were to get a fee out of that some way or other—I don't know. But we didn't look upon it that they would ever get anything out of it. That is the way we felt about at at that time.

Q. Well, there was a location fee provided in the contract of $185?

A. Yes.

Q. Now, when you went to Oregon City to prove up, make your final proof, you say Mr. Jones did not accompany you there?

A. No. Potter accompanied us.

Q. Mr. Potter went along?

A. Yes.

Q. And the questions up there were read to you, and your answers taken down. Well, isn't it a fact, Mr. Wells, that it didn't make much difference what answer you gave. They put it down the way they wanted to?

A. Well, I don't remember; but they wrote it down themselves and they read it over, and I think I just subscribed to what they put down and read over.

Q. Yes. I mean the people in the Land Office, the Land Office clerks.

A. In the Land Office, yes.

Q. You say there was some young lady taking down your answers?

A. Yes.

Q. And then they picked that up and read it over hastily to you and said, "Sign here." Is that the way of it?

A. About the way it was done, yes; with me it was.

Q. Well, I mean so far as you were concerned?

A. Yes.

Q. And at the time you were proving up you honestly believed at that time that you had conformed to the United States law, entitling you to make final proof upon your land?

A. That was my opinion, and I guess it was the opinion of all of them, as far as that is concerned, from what I heard—was talked about at that time.

Q. And at the time that you made your final proof, did you exhibit to the land officers your honorable discharge?

A. Yes, sir.

Q. And they at that time credited you with the remainder of the residence; credited the old soldiers with the remainder of the residence, or deducted the time of service out of the time of residence; that is, the time of service was allowed?

A. I think that—yes, I am satisfied that was the way, yes.

Q. I didn't hear you?

A. I say, yes, that was the way.

Q. And you believed at that time, and they believed, so far as you know, that they had a right,

a legal right to deduct their time of service in the United States Army from their time of residence on their homestead?

A. That was our understanding, my understanding.

Q. And they believed that and acted on it?

A. How?

Q. You believed that and acted on it, obeyed it?

A. I acted on that belief, yes.

Q. Had anyone ever suggested to you or told you that you were not entitled to deduct your time of service in the Army?

A. No, no.

Q. I will ask you whether or not you know that Mr. Jones believed, Mr. Jones and Mr. Potter didn't also believe that the soldiers were entitled to credit for the time that they served in the Army?

A. There is where I got my information from, that they were—entitled to it.

Q. Well, you had know that before from your experience in Kansas, had you not?

A. I had known it before. I knew it before, that they was entitled to the time; that is, two years' service.

Q. Yes. Then after you had made your final proof and gotten your final certificate, did you execute a mortgage to Mr. Jones?

A. I don't remember whether I did or not, but I am under the impression I did. I think I did.

Q. You got the $200 which was agreed upon before?

A. Yes, sir.

Q. And that was included in the mortgage?

A. Yes, sir.

Q. If you gave a mortgage. Then, how long after that time was it before you sold the land, if you remember? How much time elapsed before you made a sale of this tract of land?

A. I don't just remember when I made the deed to him, but I think it was about a year perhaps.

Q. And you sold it to Mr. Jones?

A. Yes, sir.

Q. And in addition to what he had advanced, in addition to his fees for location, and what he had advanced for building cabins and improvements and expenses of proving up, and the $200, which was all included in the mortgage, if there was a mortgage given—you and he agreed upon a price over and above that at the time of the sale?

A. Yes, that is all I got.

Q. What?

A. That is all I got, was just the agreement. I lived up to the agreement, whatever the agreement was. You have it there before you.

Q. Well, at the time that you deeded it over, wasn't there some more money paid to you?

A. Yes, there was a little bit more paid to me. I borrowed a little bit of him, $100 I think, and gave my note.

Q. And on that you had paid some, hadn't you, about $40?

A. Yes; yes; I think about $40. I think the note was about $140 or $160, I have forgotten now which it was; and he paid me the difference.

Q. Then he gave you the difference in money?

A. Yes, he gave me the difference in money.

Q. And you made a deed to him?

A. Yes.

Q. But at any time during this year or at the time you gave the mortgage, you were at perfect liberty, so far as any arrangement you had with Mr. Jones, to sell this land to any person you saw fit? Is that correct?

A. That was correct, yes.

Q. And the purchaser would have to pay back to Mr. Jones—to be taken subject to the mortgage—the purchaser would have to pay back to Mr. Jones what he had advanced on the land?

A. I presume that was the way, yes. I presume that was the way, yes.

Q. Unless you had made a cash sale?

A. Yes.

Q. Now, do you remember about what it was you received from Mr. Jones in cash? About $60?

A. How?

Q. What did you receive in cash from Mr. Jones at the time he got the deed, if you remember?

A. I don't remember. I thought it was about $100 altogether.

Q. About $100?

A. It seems to me it was that way. I won't say positively. Maybe it was not that much.

Q. Something like $100. And you were released from all further debt or obligation to Mr. Jones?

A. Yes, sir.

Q. By reason of this money advanced for improvements, etc?

A. Yes.

REDIRECT EXAMINATION.

Q. Mr. Wells, you stated, I believe, in answer to counsel for the defendant, that you believed you had fully complied with the laws governing homesteads in making your application, so far as you understood the laws to be?

A. What was the first part of that?

Q. That is, you believed you were fully complying with the homestead laws covering your homestead entry, so far as you understood those laws to be?

A. I believe I did, yes.

Q. You understood, did you, that actual residence is the same as a visit to the land?

A. Well, I don't really—I didn't consider it to that extent with a man that served in the Army. I looked at it a little bit different, a man that served in the Army, than a citizen that never served in the Army, or in the defense of his country.

Q. You thought, then, that it would be different in any other case except that of a soldier?

A. I do. I have always looked upon it that a soldier was entitled to the land without residence. I have always felt that way. I don't know why. I may be wrong, but I did feel that way, and that is one reason why I took this thing up.

Q. So then you are free to say that you had no intention of living on that land?

A. Well, I don't know. I am very sorry that I thought at that time that way. I am very sorry as the matter has turned out.

Q. Did you discuss your ideas with Mr. Jones or with Mr. Potter concerning your ideas, or did they communicate them to you?

A. No, they did not.

Q. What discussion did you have with them?

A. They did not, as far as I stated to you, in regard to the old soldiers.

Q. When you discussed this question with Mr. Jones or with Mr. Potter, did you discuss with them that these other old soldiers had no intention of leaving their homes and residence here in Portland, and expected to take up claims because they thought they were entitled to it merely by a visit?

A. No, there was no discussion in that way at all with them, but Mr. Jones always told me if they wanted to go and live on the claim they could do so.

Q. Did Mr. Jones ever say to you they didn't have to live on the land if they didn't want to?

A. No, he never said—he never said that.

Q. You thought that, didn't you?

A. I thought that.

Q. Was that thought communicated to Mr. Jones at any time?

A. No, I don't know that I ever did express my views in that respect.

Q. Would you say it was not discussed with him about that feature?

A. I don't remember. Mr. Potter might have said something to me about it, but I don't think Mr. Jones and I ever talked about it.

Q. But in any event, your views were the same as the views of Mr. Jones and Mr. Potter, were they, concerning the law governing homesteads to soldiers?

A. Well, I don't really—I hardly can answer that question, because it has been such a long time that these things have been discussed that I have forgotten what their opinion was upon that question.

Q. Mr. Wells, what was the purpose of receiving $200 after making final proof?

A. That was for the purpose of deeding the property over to Mr. Jones in furnishing the money.

Q. That was the real purpose, was it?

A. That was the purpose, yes.

RECROSS EXAMINATION.

Q. Mr. Wells, there was no agreement upon the payment of that $200, that you were to deed the

land over, the first $200 that was included in the mortgage, was there?

A. The first $200?

Q. The first $200?

A. There was only one $200 in it.

Q. That was to be included in the mortgage?

A That was to be included in the mortgage, yes. That was included in the mortgage.

Court: Is that $185 or $200?

Mr. Hall: It was $185 and $100; and then with the expenses it made altogether $320. He was to secure a loan of $200. That made $720. They were to give a mortgage for the $720. Is that correct?

A. That is correct.

Q. But there was no agreement or arrangement that any deed was to pass upon the payment of that $200, was there?

A. No, there was no agreement.

Q. Now, there is one other thing I wanted to ask you about, with permission of the court, which I overlooked. That is, at the time of making your final proof, there was no one suggested to you or to any of these soldiers, so far as you know, what their answers should be to any of these questions, was there?

A. Not to me, there was not.

Q. Was there to any of them that you know of?

A. Not that I know of; at least I have never heard anyone say anything about it.

Q. Neither by Mr. Potter nor Mr. Jones or anyone else that you know of?

A. No, no.

Q. The old soldiers would not have permitted that? You would not have permitted it, would you?

A. I don't think I would.

Q. To tell you what you should testify to?

A. I think not.

REDIRECT EXAMINATION.

Q. Wasn't the order of witnesses discussed as to how the proof was to be made? You were to be the first, and the others should follow?

A. Me first and the others to follow?

Q. Yes.

A. That is too long back. I don't just remember.

Q. Was Mr. Potter with you at the time you appeared as a witness for any of these claimants? Wasn't Mr. Potter inside the railing of the office there, the Land Office?

A. I don't know that he was. He might have been.

EXAMINATION BY THE COURT.

Q. Mr. Wells, did you give a mortgage in your case?

A. I think I did. If I remember right, I give a mortgage to Mr. Jones.

Q. How long after giving that mortgage, then, did you deed this land to Mr. Jones?

A. Well, I just can't tell. It must have been a year—it must have been.

Q. Well, did you understand when you gave the mortgage that you were to finally deed that to Mr. Jones?

A. I had the privilege of paying that mortgage off and holding the land, or I could deed the land to him if I seen I could not lift the mortgage.

Q. Well, you could have deeded the land to anyone else, could you?

A. Oh, yes, I could have deeded the land to anybody else.

Q. But you would have had to pay Mr. Jones?

A. I would have had to pay Mr. Jones.

Q. Did you make any effort to deed the land to anybody else, or sell the property to anybody else?

A. I did not. I did not.

Q. You never understood—you didn't have an understanding with Mr. Jones at the time you gave that mortgage, or at any time when you were making final proof, that Mr. Jones would take that land from you?

A. Well, I understood that if I didn't pay the mortgage off that he could foreclose it.

Q. But prior to your deeding your land, you had no understanding with him that you would deed this land to him?

A. Nothing more to him, or anybody else.

Q. For the amount of the mortgage?

A. Yes, for the amount of the mortgage or more?

Q. Yes.

A. As I understand, some of the comrades did sell to others for more money; but I was not so lucky as to get an offer for more money.

REDIRECT EXAMINATION RESUMED.

Q. Whom did you deed your claim to?

A. Well, I think it was—I believe the name was Sisler.

Q. And who brought the deed to you to sign for Sisler?

A. I think Mr. Potter did.

Q. And who was Sisler, do you know?

A. I don't know him.

Q. Who paid you the money for your conveyance?

A. Mr. Jones.

Witnessed excused.

Mr. Goldstein: At this time, if the court please, I desire to read the deposition of Thaddeus S. Potter.

Whereupon said deposition was read, and exceptions saved to the objections which were overruled.

(Omit Title.)

In pursuance of a subpoena issued in the above-entitled cause, Thaddeus S. Potter appeared before United States Commissioner Robt. W. McClelland at 1211 American Bank Building, Seattle, Wash-

ington, on the 25th day of November, 1918, at eleven o'clock a. m.;

The Government appearing by Mr. Barnette Goldstein, Assistant United States Attorney for the District of Oregon;

The defendant appearing in person and being represented by Mr. John H. Hall.

Whereupon the said Thaddeus S. Potter was by the Commissioner duly sworn to tell the truth, the whole truth, and nothing but the truth in his testimony about to be given, and the following proceedings were had:

Thaddeus S. Potter, produced as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Goldstein:

Q. Your name in full, please?

A. Thaddeus S. Potter.

Q. Where do you live, Mr. Potter?

A. Lake Crescent, Washington.

Q. How long have you lived there?

A. Most of the time about eleven years.

Q. Prior to that time where did you live?

A. Immediately prior to that time in Portland, Oregon.

Q. How long had you lived at Portland, Oregon?

A. Since 1889.

Q. What is your present employment?

A. Engineer.

Q. What was your employment while a resident of Portland, Oregon?

A. Stenographer and attorney.

Q. Did you practice law in the City of Portland?

A. Yes, sir.

Q. Between what years were you actively so engaged?

A. Between 1891 and about 1907.

Q. Where were your offices located?

A. Well, in different buildings. In the Worcester building and the Chamber of Commerce building principally.

Q. Do you know the defendant, Willard N. Jones?

A. I do.

Q. How long have you known him?

A. About twenty-five years.

Q. Where did you first become acquainted with him?

A. Portland, Oregon.

Q. Did you ever have offices with Willard N. Jones?

A. I did.

Q. Where?

A. In the Worcester and also in the Chamber of Commerce.

Q. When did you first begin officing with him?

A. Probably about the winter of 1899.

Q. From that time how long did that relationship continue?

A. I think until about 1902.

Q. Were you at any time engaged in locating soldiers or soldiers' wives upon land subject to homestead entry?

A. Yes.

Q. When did you first become so engaged?

A. I think it must have been about 1900.

Q. At whose instigation?

A. Mr. Jones'.

Q. Just explain, if you please, what Mr. Jones told you on that occasion and what you did, if anything, with respect to the same?

A. Well, he began by locating soldiers' widows on homestead claims.

Q. What did he ask you to do with respect to that?

A. Well, I don't remember that he asked me to do any specific thing, but I helped generally with whatever there was to be done in reference to it.

Q. Who first suggested locating soldiers' widows?

A. Mr. Jones.

Q. In what respect did he suggest it to you? What was to be done? How was it to be done?

A. Well, the understanding was that residence in the case of soldiers' widows on the claims was not required. They were to be located on the claims, and some things were to be done. For example, the

lands were supposed to be cultivated, and made to conform to the homestead law; and that part of it he was to do.

Q. What part was Mr. Jones to do?

A. To perform the cultivation—necessary cultivation, and the improvement on the land—on the homestead claims—whatever was necessary to be done.

Q. As I understand it, Mr. Potter, then, there was first a suggestion to locate soldiers' widows because there was no residence required?

A. Well, no residence was required in that case, he said.

Q. Who secured the soldiers?

A. Well, I went to see some of them myself.

Q. At whose request?

A. At Mr. Jones' request.

Q. What was the arrangement between you and Mr. Jones as to the consideration to be paid you for locating these widows?

A. There was no arrangement.

Mr. Hall: Counsel for defendant objects to the introduction of any evidence regarding soldiers' widows as being irrelevant and immaterial.

Mr. Goldstein: This line of testimony is offered for the purpose of leading up to the subsequent arrangement. I want the record to show the reason I am putting it in.

Mr. Hall: Let it be considered that our objection goes to all of this class of testimony without my having to reiterate it.

Mr. Goldstein: Oh, certainly.

Q. As I understand it, Mr. Potter, Mr. Jones suggested the locating of soldiers' widows upon homestead entries.

A. Yes, sir.

Q. Upon homestead lands?

A. Yes, sir.

Q. Where was this land?

A. The land was situated in Lincoln County, Oregon, on the Siletz Indian Reservation.

Q. Who first suggested where this land was located?

A. To me?

Q. Yes.

A. Mr. Jones.

Q. What, if anything, did he say to you as to the method to be followed in locating these widows upon these lands?

A. Well, I don't remember that he said anything particular about the method to be followed. I don't —perhaps I don't understand the question exactly.

Q. What I mean, Mr. Potter, is this: You stated that Mr. Jones suggested locating soldiers' widows upon the Siletz land. Now, what I am trying to ascertain is how were these widows to be found and what part were you to play in arranging for their location upon these lands? What was he to do and what were you to receive for your service and so forth?

A. I said there was no arrangement between

us for compensation to me, and what I did was to —at that stage of the thing—was to see some of these widows and explain to them what the proposition was and the benefits that were supposed to accrue to them and get them to locate or to file homestead applications.

Q. How many of these widows did you, in pursuance of that arrangement, locate on these Siletz lands?

A. There were located pursuant to that arrangement—I don't know, perhaps a dozen; possibly more. I can't recall.

Q. Do you know a soldier's widow by the name of Lehman?

A. Yes, I think I remember that one.

Q. Was she one of these widows you have testified about?

A. I think so.

Q. Did you locate her?

A. I presume she filed on the land pursuant to that arrangement.

Q. Did you take her out to see the land?

A. No.

Q. Do you know who did?

A. I don't know that anyone ever did.

Q. Do you know a soldier's widow by the name of Annette Huston?

A. I don't remember that one.

Q. Do you remember a soldier's widow by the name of Amelia C. Mullen?

A. No, I don't remember that one.

Q. Do you know a soldier's widow by the name of Martha Miller?

A. No.

Q. Do you remember a soldier's widow by the name of Elizabeth Meyer?

A. I think I have a faint remembrance that that was one, but I am not positive about that.

Q. Did she file upon the land?

A. I cannot say.

Q. Did you take her out to see the land?

A. I did not.

Q. Do you recall a soldier's widow by the name of L. C. Wendorf?

A. Yes, I recall that name.

Q. Did you procure her to file upon that land?

A. I don't think I did.

Q. Who did?

A. I don't know.

Q. Did you take her out to see the land?

A. I did not.

Q. What does your recollection of this woman consist of?

A. I haven't any specific recollection only the name is familiar to me as probably the name of one of those women who filed pursuant to that.

Q. Do you remember a soldier's widow by the name of M. E. Sawin?

A. Yes, I remember that one.

Q. Did you procure her to file upon this land?

A. I can't state now whether I did or not.

Q. Do you know whether you showed her the land?

A. I did not.

Q. Do you recall a soldier's widow by the name of Durkee?

A. No, I don't remember that one.

Q. Do you remember a soldier's widow by the name of Esther P. Collins?

A. Yes, I remember that one.

Q. Did you locate her upon this land or procure her to file upon it?

A. I don't know that I did or that I did not. I don't want to say that I did or that I did not.

Q. Did you show her this land?

A. No.

Q. Do you recall a soldier's widow by the name of M. E. Bushong?

A. Yes, sir.

Q. Did you procure her to file upon this land?

A. I remember talking to her about it, probably in the first instance.

Q. Do you remember procuring her to file?

A. She did file.

Q. Did you show her the land?

A. No.

Q. Did anyone show her the land?

A. Not to my knowledge.

Q. Do you recall a soldier's widow named Clara X. Allison?

A. I do.

Q. Did you procure her to file upon this land?

A. I called on her and spoke to her about it.

Q. Did she file upon the land?

A. She did.

Q. Did you show her the land?

A. I did not.

Q. Did anyone show her the land?

A. Not to my knowledge.

Q. Do you recall a soldier's widow by the name of Hattie C. Allebach?

A. Yes, sir.

Q. Did you procure her to file upon the land?

A. In the same way that I did the others.

Q. Did you show her the land?

A. I did not.

Q. Did anyone show her the land?

A. Not to my knowledge.

Q. Were there any others that I have not mentioned?

A. I think perhaps there were, but I cannot now recall their names.

Q. In round numbers, how many soldiers' widows would you say that you saw and solicited them to file upon this land?

A. Why, possibly six or eight or ten.

Q. And in no instance did you take any of these ladies out to see the land or settle on the land?

A. In no case.

Q. In all these cases you did so at the suggestion of Mr. Jones?

A. Yes, sir; for him.

Q. And it was for his benefit and his alone?

A. Yes, sir,

Q. Did you receive any compensation for doing these things?

A. Well, I—no, not exactly.

Q. What, if anything, did you reecive from him?

A. I was under obligations to Mr. Jones financially and otherwise when these things came up. When the opportunities came to do these things, what little I could do I was very glad to do it—reciprocate.

Q. What, if anything, did you say to these widows as to the result of their filings?

A. Well, the substance of it was expressed in a contract which was entered into between—between, I presume, Mr. Jones and those widows—a written contract, as I now recollect. The nature and sum of the whole thing would be that they could get the claim, or in case they decided that they did not want the claim they could—no, they could get the claim. That was the way of it. And they obligated themselves to give a mortgage to Mr. Jones for the amount that he h l advanced on the claim—the filing fee—and a specific amount to cover the cost of cultivation and then any other expenses there might have been.

Q. Did you call on them to sign these contracts before accepting the filings?

A. I think so.

Q. What did you do with the contracts?

A. Mr. Jones had them.

Q. What did you do with the filings or applications? File them with the Clerk of the Land Office?

A. The Land Office officials.

Q. Was anything done by you with respect to proving up on the land for these women?

A. I think I was present when the proofs were taken in most cases; perhaps all. I am not certain.

Q. Where were all these women living at the time? In the City of Portland?

A. Most of them in the City of Portland, or near there.

Q. During the time from these filings to the subsequent attempt to prove up on these claims, they continued to reside in Portland?

A. So far as I am aware, yes, sir.

Q. Do you know whether or not any of them established a residence upon any of these lands?

A. Not to my knowledge.

Q. Do you know whether any of them cultivated the lands?

A. Except through Mr. Jones as their agent.

Q. Who did the cultivating?

A. Mr. Jones or someone employed by him for that purpose, I think.

Q. How long did you continue to locate or attempt to locate soldiers' widows upon these lands?

A. Well, it didn't last very long.

Q. What was the cause of its discontinuance?

A. I don't remember now what was the cause of it.

Q. Who suggested you to refrain from continuing with the matter further?

A. I can't say.

Q. How did you happen to stop?

A. I suppose there were no more. I don't remember.

Q. There was no more what?

A. Applicants.

Q. No more soldiers' widows? That what you mean, Mr. Potter? As far as you know, that was the reason?

A. I don't know.

Q. Do you know whether there were any others besides yourself looking for soldiers' widows to file upon these lands?

A. Perhaps Mr. J. L. Wells.

Q. You know that is a fact?

A. I don't know, but I think so.

Q. Also for and on behalf of Mr. Jones, if you know?

A. I think so.

Mr. Hall: I move to strike out the answer of the witness where he says he thinks so but has no personal knowledge of it.

Q. Do you know Mr. Wells?

A. Yes, sir.

Q. Did you know him at or about the time of this event?

A. Yes, I did.

Q. What was he doing at that time, if you know?

A. Well, I am not certain.

Q. Who introduced you to Mr. Wells?

A. I don't remember that. I think I knew him before—before these—

Q. Where were his offices?

A. In East Portland.

Q. Did you ever see him in company with Jones?

A. Yes, sir.

Q. In connection with this matter?

A. Yes, sir.

Q. Did you ever see Mr. Wells bring in any widows into your office or Mr. Jones' office?

A. Not to my recollection.

Q. Did you ever see any filings made by Mr. Wells on behalf of these widows?

A. No, sir.

Q. What, if any other, arrangements were made by you with Mr. Jones to locate others besides soldiers' widows upon Siletz lands?

A. None.

Q. Did you locate anyone else?

A. I did not.

Q. Did you locate old soldiers on the land?

A. I did not.

Q. Did you procure old soldiers?

A. No, sir.

Q. To file?

A. I did not.

Mr. Hall: I object to these questions in form as being leading.

Q. Did you have any further conversation with Mr. Jones about filings upon these lands?

A. Yes, sir.

Q. Well, state what that was.

A. Well, we lived in the same office together and we had a great many conversations, but I can't tell you what they were.

Q. With respect to these lands and the filings upon these lands?

A. These transactions covered a period of many years. I talked to him many times about that. It would be utterly impossible now to say what they were.

Q. You have seen old soldiers come in, Mr. Potter, have you?

A. I have.

Q. Do you know a man by the name of Anthony Gannon?

A. Yes, sir.

Q. Where was he the first time you saw him?

A. My recollection is I saw him first in Lincoln County, Oregon.

Q. What were you doing there?

A. I was in that place probably on a fishing trip at that time.

Q. Do you know what he was doing there?

A. He came there to locate on a homestead claim.

Q. Who introduced you to him?

A. I don't think I was ever introduced to him.

Q. Do you know whether or not he did locate on any of the lands there?

A. Yes, sir.

Q. How do you know?

A. Well, I probably acted as his attorney—that is, I signed the papers, signed his application in the usual way the attorneys did in those day, and made filing, or was with him when he made it at the Land Office.

Q. At whose request did you do that?

A. Mr. Jones'.

Q. When did Mr. Jones request you to do that?

A. Well, it was during this time that I spoke of. I can't give any dates.

Q. Was it in Lincoln County?

A. No, sir.

Q. Was it in Portland?

A. Yes, sir.

Q. Was it after you had met Gannon down in Lincoln County?

A. I think so.

Q. What did Mr. Jones say, if anything, concerning the entry of Mr. Gannon?

A. Well, I don't remember what he said exactly, only I can tell you the result of it, that I—

Q. What did he ask you to do?

A. That I acted as his attorney in the case.

Q. Whose attorney?

A. The applicant's.

Q. At Mr. Jones' request?

A. Yes, sir.

Q. Did you arrange for his proof witnesses?

A. I don't understand just what you mean by that question.

Q. At the time of making application for final patent?

A. No, I don't think so.

Q. What, if anything, did you do with respect to Gannon's entry?

A. Well, as I said, I acted as his attorney, generally looked after the application from the time it was made until the proof was made.

Q. Now, I am asking you if at the time the proof was made did you arrange for his witnesses?

A. No, I didn't make any arrangement for witnesses, as I remember of.

Q. Did you know the names of the witnesses to Gannon's claim?

A. Not now, I can't tell.

Q. Do you know Franklin Hummel?

A. I know him.

Q. Who is he?

A. He was another one of the homestead applicants.

Q. Is it a fact that you took Gannon to his claim on the first trip?

A. I don't think so.

Q. Did you show him where his land was located?

A. I showed two or three of those men where the land was located, but I don't know now whether Gannon was one of them or not.

Q. At whose request?

A. It was not at anybody's request especially. I was there when the men came out to visit their claims, as I said before, and there was someone, a cruiser, or someone, in the employ of Mr. Jones to show these people their lands. There happened to be two or three of them the location of which I was familiar with, and it was very near, and I showed those two or three the situation of their claims.

Q. What, if anything, did you receive from Mr. Jones for acting as Mr. Gannon's attorney in connection with this claim?

A. Nothing except as I have already stated.

Q. Did you furnish Gannon with a description of his claim?

A. Not I.

Q. Do you know whether Gannon established any residence on the claims?

A. He went on the claim.

Q. Do you know how long he stayed on the claim?

A. A very short time.

Q. How long?

A. Well, he went and came on the same day.

Q. He went and came on the same day?

A. Yes, sir.

Q. Do you know whether Gannon applied for the land for the benefit of the defendant Jones?

A. No, I don't know that.

Q. Were you present when Gannon made his final proof?

A. I was present when a number of those settlers made final proof. Whether Mr. Gannon was one I wouldn't attempt now to say.

Q. Do you know a soldier by the name of William Teghtmeier?

A. Yes, sir.

Q. When and where did you first become acquainted with him?

A. Possibly on this same occasion. I can't remember positively about that.

Q. What, if anything, did you have to do with respect to Teghtmeier's claim?

A. Well, I don't remember anything specifically, only the same as I did in respect to Gannon's claim. I acted—

Q. Who requested you to do that?

A. Mr. Jones. I acted as attorney for nearly

all those applicants the same way at the same man's request.

Q. Did you furnish any money to any of these claimants for making their final proof?

A. Yes, sir.

Q. How much money did you pay Gannon?

A. I paid the fees, whatever they were, I don't know.

Q. Did you furnish any of the expenses to any of these settlers to make a trip to Lincoln County?

A. I don't remember that I did.

Q. Who furnished you the money with which to pay the fees?

A. Mr. Jones.

Q. Did you hire anyone to take these settlers from Toledo out to their claims by wagon?

A. I think I did, yes, sir.

Q. Who did you hire?

A. I don't remember.

Q. Who reimbursed you for the expenses you incurred?

A. Mr. Jones reimbursed me in all cases for all expenses that I incurred in connection with the whole affair from the beginning to the end.

Q. You acted, then, as Mr. Jones' agent in transacting the business?

Mr. Hall: Object to that as calling for a conclusion and as suggestive.

A. Those are the things that I did. That is the way that I did for him.

Q. In order to save time, Mr. Potter, I will read you these names and ask you what you know concerning their entries, if anything. Just state what work you did in connection with the homestead applications of Anthony Gannon, Joseph Gillis, Thomas Johnson, John L. Wells, George Rilyea, Louis Paquet, Richard D. Depue, Oliver I. Conner, Benjamin S. Hunter, Franklin Hummel, Edward C. Brigham, Nelson B. Smith, William Teghtmeier, George J. West, William D. Everson, Munsey J. Morris, Henry Marble, Bert Blauvelt, Daniel Clark, George F. Merrill, G. C. Lawrence, James Lamphier, H. K. Finch, A. Longnecker, and Henry M. Riggs.

Mr. Hall: Counsel for defendant objects to the witness testifying regarding any of the parties named by counsel except Benjamin S. Hunter, Oliver I. Connor, William Teghtmeier, Richard B. Depue, Joseph Gillis, Thomas Johnson, Edward C. Brigham, Anthony Gannon, and J. L. Wells, being the parties specifically mentioned in the plaintiff's complaint in this cause.

Mr. Goldstein: This proof is offered to show the general arrangement with respect to the same transaction.

A. With the exception of some of the names, I acted about the same in all cases as attorney for the applicants.

Q. Did you represent them in any contests that might have been or were brought?

A. Yes, sir, some of them, I believe.

Q. Now, who paid you for representing them in these transactions?

A. I was never paid any specific sum for any such service.

Q. Who paid you for any expenses that you incurred—

A. Mr. Jones.

Q. —in the way of fees and so forth?

A. Mr. Jones.

Q. What, if anything, did you receive as your compensation for your part in the transaction?

A. Just as I have said before, I was under obligations, financially and otherwise, to Mr. Jones and unable to discharge them. When those conditions arose where I could do those things, I felt under obligations to do it and did what little I could to help him along.

Q. What did you receive in the way of compensation from any of the entrymen?

A. Nothing.

Q. You might explain now just the procedure that was followed by you with respect to these entrymen. Who introduced you to these people and what was done by you or by them in connection with getting patents?

A. Well, I met them generally either through Mr. Jones or Mr. Wells. I can't—I don't remember a single instance where I met any particular individual, but generally speaking that is my recollec-

tion that I met them through Mr. Wells, or Mr. Jones.

Q. What was the next thing done after meeting them?

A. Well, they filed on the land. They went and made their act of settlement on the land usually and then we filed the application—the homestead application.

Q. Before you filed their applications, were they required to do anything by you?

A. They were never required to do anything by me with the exception that they generally had made their visit to the land or act of settlement, as they call it.

Q. I mean in the way of a contract or an obligation?

A. I think they signed a contract, but as far as those soldiers were concerned I had nothing to do with the signing of those contracts, and don't know anything about it.

Q. Were these contracts all signed before you had anything to do with it?

A. I think so.

Q. Then, your attention was called to them by Mr. Jones or Mr. Wells?

A. Yes, sir.

Q. Who took them down to show them where this land was located?

A. Why, there was someone down there. I don't

know. There was a different person down there at different times who did that.

Q. How often would you take them down there?

A. Well, I didn't take them. I went down with them once, I think—some of them.

Q. And you came back with them the same day.

A. No.

Q. Did they come back before you did?

A. I think so.

Q. What was the purpose of their going there?

A. To visit their prospective claims so far as I know.

Q. Were there shacks already built upon the land?

A. I think not at that time.

Q. Where did they stop upon the land?

A. They didn't stop very long on it. They just made a visit to it, so far as I know. I was not with them when actually on the land except in one or two or three cases.

Q. Were they residents of Portland, Oregon, or—

A. So far as I know, they lived, most of them, around in that vicinity.

Q. Did they continue to reside in Portland, Oregon, during the time the entry was continuing?

A. So far as I know, they lived there.

Q. What, if any, residence was required of them?

A. I don't understand exactly what you mean.

Q. What did you tell them with respect to residence on the land?

A. I didn't tell them anything.

Q. Who told them, if you know?

A. I don't know.

Q. What, if anything, did you say with respect to their visiting the land?

A. I don't remember that I ever said anything to them. Possibly I told them it was time for them to go and visit their claims, some of them.

Q. Who would suggest that to you, that it was time?

A. I don't remember whether I did it of my own motion or whether Mr. Jones suggested.

Q. Are these your signatures to the papers I hand you?

A. Those are my signatures, yes, sir.

Q. What do they purport to be—letters that you wrote?

A. Letters written by me—one to Mr. Addison Longnecker—each to Mr. Addison Longnecker.

Q. At whose instance or suggestion did you write those letters?

A. As I said before, I don't remember whether I did it of my own motion, or whether Mr. Jones asked me to do it.

Q. Your acquaintance with them was the result of arrangement with Mr. Jones?

A. My acquaintance with these men or this man?

Q. This man.

A. Yes, sir.

Mr. Goldstein: I offer in evidence those two letters.

Mr. Hall: Counsel for defendant objects to the introduction of the letters identified by witness upon the ground of being irrelevant and immaterial.

(Whereupon said letters were admitted in evidence as Government's Exhibits 1 and 2.)

Q. What, if anything, do you know about the residence and cultivation of the land covered by the homestead application of Anthony Gannon?

A. I know very little about it of my own knowledge.

Q. Well, do you know whether there was any cultivation made by Anthony Gannon?

A. No, I do not.

Q. What, if anything, do you know about the residence of Anthony Gannon as to whether or not it was continuous?

A. Well, I don't know. I don't know whether he resided upon the land continuously—that is, uniformly, upon the land.

Q. You were present when he made final proof, were you?

A. I presume I was. I don't remember, but I think I was present when nearly all of them made their final proof.

Q. Did you know or did you not know at that time whether the proof was false?

A. I don't know.

Mr. Goldstein: I offer in evidence a certified copy of the homestead proof of Anthony Gannon, which he testified to that he acted as attorney for and was present. If counsel has no objection I would introduce the entire record of the homestead entry of Anthony Gannon. That will show the complete history of the case.

Q. You recall, do you, that you acted as the attorney for Anthony Gannon in perfecting his application?

A. I am not now able to recall any specific entry of having acted on it, but I know generally I asked for all of them, and I suppose from that I acted as Mr. Gannon's attorney.

Mr. Hall: We will object to it generally as irrelevant and immaterial, but not as to its genuineness.

(Whereupon the certified copy offered in evidence by Mr. Goldstein was admitted in evidence as Government's Exhibit 3.)

Q. Government's Exhibit 3 includes the testimony of the claimant Anthony Gannon in making homestead proof covering the Homestead Entry No. 13,087, for the east half of the west half of Section 11, township 9 south, range 10 west, Willamette Meridian. I note that Anthony Gannon gives his residence as Siletz, Oregon. Do you know the residence—did you know his residence?

A. I suppose that as a matter of law is where his residence was.

Q. No, you are not the attorney, Mr. Potter.

A. No, I don't want to be.

Q. Do you know, as a matter of fact, what was his residence at that time?

A. No.

Q. Do you know whether it was in Portland, Oregon?

A. I do not.

Q. Do you recall going down with him from Portland to Siletz?

A. As I said in the beginning, possibly I did. I am not certain. I think I was at the Siletz when he first went down.

Q. Do you know whether he resided on his claim more than one or two nights at a time, if at all?

A. That is all that I know anything about.

Q. What is that?

A. A residence of one or two days or nights at a time.

Q. Was that the most that he resided on that?

A. That is all that I know anything about.

Q. Did you suggest that he give his residence in Siletz, Oregon?

A. Not to my recollection. Possibly I did.

Q. What would be your purpose in requesting him to state that as his residence?

A. Well, if I did that—which I am not certain

about—it would be because the land is located near that postoffice.

Q. You knew at that time that his residence might have been elsewhere?

A. Well, I knew he came from Portland.

Q. Wasn't that part of the general arrangement to instruct these entrymen as to stating their residence to be in Siletz?

Mr. Hall: Objected to as leading and suggestive.

A. No.

Q. In the testimony of the claimant, the following question and answer appear: "Q. When was your house built on the land and when did you establish actual residence therein? A. First of October, 1900. Same time; house 12x24, one window, one door, 20 fruit trees, garden, over an acre under fence, value about $250 to $300. Also two miles of trail cut to the place." What were the true facts about that?

A. Well, that is all I know about. A trail and little house were there and some clearing made.

Q. Do you know whether he had done this?

A. He didn't do it himself.

Q. Who did it?

A. So far as I am aware, it was done by someone in the employ of Mr. Jones.

Q. Who paid him for it?

A. I can't testify as to that.

Q. Who did the work? Do you recall whether Wade or Blauvelt, or Danforth?

A. No.

Q. Did Gannon actually establish residence at that place?

A. He was on the land.

Q. Did he establish a residence?

A. Well, I don't know what you mean by establishing a residence. If you would explain exactly what you mean by it, why maybe I could answer the question.

Q. Did he take any of his personal effects to live on the place?

A. Not to my knowledge.

Q. Did he take any provisions or any clothing?

A. Not to my knowledge.

Q. The following question and answer also appear therein: "Q. How much of the land have you cultivated each season and for how many seasons have you raised crops thereon? A. A little over an acre; one season." What is the truth about that?

A. I don't know.

Q. Do you know whether or not he cultivated the land?

A. The only time I saw him on the land was the time or about the time that Mr. Gannon went there first. I don't remember of having been on the land afterwards. I possibly passed through on a trail.

Q. Do you know he cultivated the land?

A. Only as I testified.

Q. Who prepared these answers to the questions?

A. What questions.

Q. To the questions propounded in the testimony of the claimant in making proof?

A. The Register and Receiver.

Q. I am asking who furnished the answers to any of the questions?

A. The witness, whoever he was.

Q. Were you present when the answers were written?

A. I don't know that I was standing right by. I was in the room or in the neighborhood.

Q. Did you discuss with the entryman what answers were to be given?

A. No.

Q. The following question and answer also appear in said claimant's testimony: "(5) Q. Of whom does your family consist and have you and your family resided continuously on the land since first establishing residence thereon? A. I have no family. I am single. I have lived there continuously, but have been off to work." What do you know as to the truth about that?

A. I don't know.

Q. Do you know whether he lived there continuously or not?

A. I don't know.

Q. Now, also, the following question and answer appear in the testimony of the claimant: "(6)

Q. For what period or periods have you been absent from the homestead since making settlement, and for what purpose; and if temporarily absent did your family reside upon and cultivate the land during such absence? A. I have been off two or three different times; never away to exceed three months at the longest. I was working to get money to improve my place." What is the truth of that?

A. I don't know.

Q. What were these entrymen to be paid for their filings?

A. I don't know that they were to be paid anything for their filings.

Q. What, if anything, did you tell them?

A. I didn't tell them anything.

Q. Did you know the terms of the contract they had with Jones?

A. Except from the contract itself.

Q. Did you ever see the contract?

A. I have.

Q. Was it in a form similar to this that I show you? (Showing two sheets to witness.)

A. Yes, sir.

Mr. Goldstein: I offer those sheets in evidence.

Mr. Hall: Counsel for defendant has no objection to the introduction of the proposed contract purporting to have been signed by Addison Longnecker, provided that it proves to be a genuine contract.

(Whereupon said paper was admitted in evidence as Government's Exhibit 4.)

(Recess to 1:30 o'clock p. m.)

AFTERNOON SESSION, 1:30 O'CLOCK.

Continuation of proceedings; all parties present.

Mr. Goldstein continuing direct examination.

Q. Mr. Potter, how many homestead entries for old soldiers would you estimate that you handled for Jones?

A. Perhaps fifteen or twenty.

Q. And in each and every instance did you or did you not pay the fees incident to these entries?

A. All those—nearly all of them, at least.

Q. In each and every instance who furnished the money?

A. Mr. Jones furnished all of the money for all of the whole operations, fees and everything that I handled. Everything that I paid out in connection with it was furnished to me by Mr. Jones.

Q. Did you have an accounting at any time with Mr. Jones as to the moneys you outlaid?

A. He gave me money necessary to meet all these various expenses.

Q. Did he give you a lump sum to cover a number, or was the amount different in each case?

A. Well, possibly he gave me a lump sum, in some of the cases, and in other specific cases the amount necessary.

Q. Did you have no accounting with him?

A. I kept him always advised as to the status of it.

Q. Did you notify him?

A. I didn't give him a written notice or anything of that sort.

Q. Did you advise him of the moneys you outlaid?

A. Yes, sir.

Q. Did the moneys given you by Jones include the expenses for round trip tickets for these entrymen up and back from Siletz to Portland?

A. I hardly think so, although it might have in some instances. That is, what I mean to say is, I don't remember whether I bought tickets for them or not.

Q. What is the fact with respect to their being paid for their expenses in going to the land?

A. That is my understanding that they were.

Q. That they were paid?

A. Yes, sir.

Q. By whom?

A. By Mr. Jones.

Q. Who authorized these entrymen as to the times when they should visit the lands?

A. Well, as you saw from the letter introduced in evidence, in at least one case I did it.

Q. Was this visit prior to the filing of the application?

A. I think that particular visit was—perhaps

so—no, it was not. It shows on its face that it was not.

Q. Who selected the land—

A. I don't know.

Q. —on which these entrymen filed?

A. I don't know that.

Q. Where did you get the information as to the particular lands that were filed upon?

A. Well, I presume at the time; although I can't remember.

Q. Where did you get the information?

A. I can't say where I got it; I suppose from Mr. Jones. I think so.

Q. Could you have gotten it from any other source than Mr. Jones?

A. Well, I might have; but I think I did get it from Mr. Jones.

Q. Did you at any time suggest any of the answers made by the entrymen in their final proofs?

A. No.

Q. Do you know anyone who did?

A. No.

Q. At the time they made their final proofs, did you or did you not know as to whether they had continuously resided on the land?

A. I knew the facts as I have already stated them about residence and cultivation.

Q. Did you or did you not know that they had not resided on the land?

A. As I have already testified, to the extent that I did testify I knew.

Q. What was the extent of their continuous residence?

A. Well, so far as I know—of course I can't say absolutely that those people did not go on the lands at other times than those I knew about. So my testimony is understood to the extent I knew about it.

Q. That extent is just going there and coming back the same day?

A. That is as far as I knew anything about it.

Q. How often would you go and make an accounting? How many times a week did you go down there?

A. I didn't go any times a week.

Q. How many times a month?

A. I can't answer a question in that form. I was down there a great many times. They might have been there a century and I wouldn't see them.

Q. Did you live there at Siletz?

A. Not continuously, no, sir.

Q. Where did you live?

A. In Portland.

Q. Did you also file upon the land?

A. I made a filing there, yes, sir.

Q. For whose benefit was that?

A. It was for my own.

Q. Do you know John L. Wells?

A. Yes, sir.

Q. Do you know whether or not he made a filing on the land?

A. He did.

Q. Was it subject to contract with Mr. Jones as the others?

A. That is my recollection.

Q. Do you know where he lived when he made the application for a homestead?

A. Well, as I said before, he had an office in East Portland, and I think he lived there.

Q. Do you know whether he resided on the land?

A. To about the same extent as the others, I think.

Q. What is that extent?

A. I have already testified two or three times that the state of my knowledge about that thing is that they went over there periodically once or possibly twice every six months. Beyond that I have no knowledge; no knowledge of my own about their residence.

Q. And that knowledge is the knowledge of Jones, do you know?

A. I can't answer that.

Q. Did you ever discuss with him concerning these entries?

A. I talked with him, yes.

Q. Did you ever have anything to do with taking of mortgages from these entrymen?

A. I think not.

Q. Would you say you did not?

A. I have no recollection of that, because I think my relations with Mr. Jones terminated before the—or about the time the final proofs were made. Possibly I might have been a witness or something to that effect, but I don't recall it now.

Q. Where was Mr. Jones during all of these transactions?

A. Well, he was in his office a portion of the time at least.

Q. In Portland?

A. It covered a long period of years, you understand. That question—he was not always there in that one particular spot during that whole period of years.

Q. Did you have anything to do with the ordering the building of cabins and the clearing?

A. No, I think not. I think I had nothing to do with that. I don't remember of ever having had anything to do with it.

Q. Do you know who did?

A. You mean who built them?

Q. Yes.

A. There was a man—I have forgotten his name—that lived down in that Siletz country somewhere, that built a number of them; but I can't recall his name.

Q. Do you know who ordered them built?

A. I think he was working for Mr. Jones.

Q. Do you or do you not know whether the entrymen continuously lived there—that is, had provisions and household furniture, stoves, and beds?

A. I never saw any great quantity of furniture there. There was a cabin built on each claim, so far as I know. I have never seen all the claims.

Q. Did you see some of the cabins?

A. Yes, I slept in some.

Q. What furniture, if any, did you see in any of the cabins?

A. In the particular one that I have in mind, there was a little stove in there and a bed and some dishes.

Q. What entry was that?

A. I don't know what entry it was.

Q. Was that George West's cabin?

A. I could not say.

Q. One known as the headquarters cabin?

A. Possibly that was the one. I don't know.

Q. Do you know where the headquarters cabin was?

A. Well, not by that name I don't know.

Q. What name did you know it by?

A. There was nobody there at the cabin at the time I stayed there except myself.

Q. Whose place was it on?

A. I told you a moment ago I don't know.

Q. How did you happen to go?

A. It was in connection with that business on the Siletz. I don't know what I was there for.

Q. How did you happen—

A. I just told you I don't know what I was

there for. It was something in connection with that business; just what it was, I don't know.

Q. You don't recall what it was you were there for?

A. Not at that particular time.

Q. Was it on the river?

A. Very near the river, yes, sir.

Q. Or a creek?

A. You mean the cabin?

Q. Yes.

A. It was not far from the Siletz River.

Q. You don't know what you were there for?

A. I have already testified two or three times that I was there in connection with this general business, but I don't know just exactly.

Q. What do you mean by general business?

A. Business pertaining to the location of these claims.

Q. Did you locate these claims?

A. No, sir.

Q. What business did you have to do with that?

A. I was down there once or twice when entrymen came down, I told you. It might have been on one of these occasions. I don't know.

Q. At any time you were there you were there at the instigation of Mr. Jones?

A. Well, I went down there to see my own claim every now and then.

Q. Did you live on your claim?

A. The same way these other people did. I visited it every six months.

Q. Did you call that continuous residence, did you?

A. That was my idea.

Q. Was that the idea Mr. Jones entertained?

A. I don't know what idea he entertained.

Q. Didn't you have a discussion with him about that?

A. I don't think so.

Q. You say you did not?

A. I don't remember any such discussion. Possibly I did.

Q. Would you say his ideas of what constitutes continuous residence were the same as yours?

A. I think our ideas must have been in accord on that question.

Q. What was your ideas as to cultivation?

A. I don't understand that question.

Q. You know that there has to be some cultivation on the land, don't you?

A. I know that was the ruling.

Q. To what extent were these lands cultivated by the entrymen?

A. That I cannot say. Most of the claims I never been on.

Q. To what extent were the claims that you were on cultivated?

A. As I told you, there was a little patch—perhaps an acre of ground—cleared off; probably an

acre of turnips or something of that character, and some grass growing.

Q. Who did it?

A. I don't know.

Q. Who did it on your land?

A. One of the men employed by Mr. Jones helped me out on that.

Q. Who paid him?

A. Mr. Jones generally, I suppose. I didn't.

Q. You didn't pay him for your own land?

A. No.

Q. Mr. Jones?

A. I think so. I think he gave him money, or gave me the money.

Q. To that extent cultivation was on the other places?

A. The ones I have seen.

Q. And that idea of yours of cultivation coincided with Mr. Jones'?

A. So far as I know.

Q. For whose benefit did these entrymen file on these claims?

A. I don't know.

Q. Would you say you don't know?

A. I do say I don't know.

Q. Would you say that you don't know anything about the contracts they entered into with Jones?

A. I do know about the contracts, yes, sir.

Q. With that knowledge you still say you don't know?

A. That is a question that is a matter of inference, for whose benefit. I can't answer questions in that form. Let me say I do not want to be contumacious. I want to answer your questions fully, but you put them in such form that I can't answer.

Q. You may answer them as you know the truth.

A. That is what I wish to do.

Q. Answer.

A. What is the question?

Q. I asked if you know it was for their benefit they filed these applications?

A. I can't answer that question.

Q. Answer it in the way you can answer it.

A. I don't know that I can answer it. I have said all I can say about it. The facts speak for themselves. I will tell you all the facts in relation to the case, if you will ask me about them; but for whose benefit it is, that is a matter of inference.

Q. Did you ever see Mr. Jones at Siletz?

A. I don't believe I ever saw him there; not to my knowledge.

Q. Did you ever see any of these entrymen in Mr. Jones' office?

A. At Jones' office?

Q. Yes.

A. Yes, sir.

Q. Do you recall which ones?

A. I remember particularly Mr. Wells. I saw him more than any of the rest. I don't know the name of any other one, only I do have a general

recollection that they came in there to the office occasionally, some of them.

Q. Did you ever suggest to any of these entrymen the method by which they were to secure patents to these lands?

A. Well, the method would be by filing a homestead claim and perfecting, that is all. Not any further than that.

Q. Did you tell them what they had to do in relation to residence and cultivation?

A. I had very little relation with the men except the relation of doing some clerical thing—preparation of some paper, or something of that sort.

Q. Did you tell them what they had to do in respect to residence and cultivation?

A. No, sir.

Q. Did you ever tell them what was to be done after patent was issued to them?

A. No, sir.

Q. Did they ever ask you?

A. No, sir, not to my knowledge or recollection.

Q. Did you ever discuss with Jones the method of locating old soldiers upon the land?

A. No, sir.

Q. How would you know when you had to take any of these entrymen down to the land?

A. Well, I didn't take them down there more than once, I think. I didn't take them at any time; I went with them once.

Q. At whose request did you go with them?

A. Probably at Mr. Jones'.

Q. Do you or do you not know that it was Mr. Jones?

A. No, I do not.

Q. At the instigation of whom else could you have gone with them?

A. I don't know of anyone else, unless I went on my own motion, unless I knew the period of time was drawing close.

Q. Who paid for your services in going?

A. I just told you that I only went once.

Q. Did you ever receive anything in the way of compensation from any of these soldiers?

A. No, sir, the service was not very great in any case.

Q. Were you present at any time when final proof was made?

A. Yes, sir, I have testified—

Q. In how many instances?

A. I think that I testified I was there when most of the proofs were made. That is my recollection now.

Q. Who arranged about getting the proof witnesses?

A. I don't know about that.

Q. Did the claimants arrange for that?

A. I don't know. Possibly Mr. Wells arranged for it, or possibly Mr. Jones. I couldn't testify as to that.

Q. Did you notify any of these entrymen when the time was ripe to make final proof?

A. I see by the letter introduced in evidence that I notified one at least. Otherwise I have no recollection of notifying others. Maybe I did.

Q. At whose suggestion would you notify them?

A. Well, if I did notify them, I notified them either at Mr. Jones' suggestion or because, as I said, that the time was approaching within which they should go on their claims according to my understanding.

Q. Would you say you at no time gave descriptions of the land to be filed on to any of these entrymen?

A. I don't think I had anything to do with that.

Q. If you did give these descriptions, from whom did you get the descriptions?

A. If I did that, why probably I got them from Mr. Jones, because I knew nothing about it myself.

Q. Do you remember Bert Blauvelt?

A. Yes.

Q. Was he one of the entrymen?

A. He was not an old soldier. I think he had a claim on the Siletz.

Q. Was this along with the others in pursuance of the general scheme that you had with Jones?

A. I don't know whether he had a contract or not.

Q. Did you have anything to do with locating him?

A. No, sir.

Q. Did you appear as one of his proof witnesses at the time of making final proof?

A. I don't remember whether I did. Possibly I was.

Q. If you did, at whose request would you be doing it?

A. I don't know that I did it.

Q. Is that your signature (showing paper to witness)?

A. That is my signature.

Q. You know what that is?

A. Yes, evidently I was a witness.

Q. At whose request were you a witness?

A. I don't remember. Possibly at his own request—Bert Blauvelt's. Most likely at his request.

Q. Do you know anything about his residence on the land?

A. Yes, sir.

Q. Was he a resident of the land?

A. Yes, sir.

Q. To what extent?

A. I think he was there about all the time. He lived down there, I think, during most or nearly all of that period.

Q. Did Blauvelt work for Jones during any of that time?

A. I think he was in his employ during most of that period.

Q. Doing what?

A. Making trails and doing that cultivation work, as I understood it.

Q. Who located him?

A. I don't know.

Q. Do you know Herman K. Finch?

A. Herman K. Finch, yes, sir.

Q. Was he one of the soldier entrymen?

A. No, sir.

Q. Do you know Esther Collins?

A. Yes, I think I remember her.

Q. She was one of the soldiers' widows?

A. I think so, yes, sir.

Q. Did you locate her?

A. I don't remember whether I talked to her about it or not in the first instance.

Q. Do you know Joseph Gillis?

A. Yes, sir, I remember him.

Q. Was he one of the soldier entrymen?

A. I think so.

Q. Did you locate him?

A. Not I.

Q. Who did?

A. Mr. Wells or Mr. Jones, as far as I know. I want to say now that I didn't locate any of the old soldiers at all, and had nothing to do with their location or securing them to go on the claims, or anything of that sort.

Q. You appeared for Gillis, did you, at the contest?

A. I don't know that there was a contest in his case or not.

Q. Were you present when he made final proof?

A. I think likely I was.

Q. At whose request?

A. Well, I was acting as his attorney at the request of Mr. Jones.

Q. At the request of Mr. Jones?

A. Merely performing my part of the work, as I understood it.

Q. Did you receive any pay from Mr. Gillis for your services?

A. No, sir.

Q. Did you know where Mr. Gillis lived at the time of—

A. No, only I had a general idea that he lived somewhere in Portland.

Q. Did you know anything about his residence on the land?

A. No, sir, except as I stated.

Q. Did you know anything about his cultivation of the land?

A. No, I don't know where his claim was exactly.

Q. You do know where he was a resident of?

A. Well, I said as far as I know he was a resident of Portland. That is, he lived there. I had a general idea that he spent his time there, if that constitutes residence.

Q. Did you ever see him on the land?

A. I don't know whether I did or not.

Q. Did you ever see any cultivation of his place?

A. I cannot answer that. I didn't know where his claim was, what section his claim was in.

Q. You know it was in the Siletz?

A. In the Siletz generally. That is all I do know.

Q. Did you ever take him down to show him the land?

A. Not to my recollection.

Q. Do you know who did the clearing for him?

A. No; Bert Blauvelt, perhaps.

Q. At whose request?

A. Well, he was working for Mr. Jones at the time.

Mr. Goldstein: I offer in evidence a certified record of the proceedings leading up to the patent to Joseph Gillis, one of the entrymen in question.

Mr. Hall: Same objection, as irrelevant and immaterial.

(Whereupon said paper was admitted in evidence as Government's Exhibit 5.)

Q. Do you know Richard D. Depue?

A. Yes, sir, I remember him.

Q. Was he one of the old veteran entrymen?

A. I think so.

Q. Were you present when he made his final proof?

A. Probably so.

Q. At whose request?

A. Mr. Jones', perhaps, if I was there.

Q. Were his expenses paid the same way by you for and on behalf of Mr. Jones?

A. Probably so; if I attended the final proof as his attorney I undoubtedly paid the fee.

Q. What do you know about his residence on the land?

A. Why, just generally as the others.

Q. Who did his cultivation?

A. I don't know that.

Q. Do you know where he was a resident of?

A. I do not.

Q. Don't you recall?

A. Well, I don't know where any of these people resided. I have seen him in Portland. That is about the extent of my knowledge of residence, that I have seen these people once or twice in Portland.

Q. Do you know whether any of them lived in Siletz?

A. Not to my knowledge.

Mr. Goldstein: I offer in evidence the certified record of patent to Richard D. Depue.

Mr. Hall: Same objection.

(Whereupon said paper was admitted in evidence as Government's Exhibit 6.)

Q. Do you know Benjamin S. Hunter?

A. Yes, sir, I think I remember him.

Q. Do you know Edward C. Brigham?

A. Yes, sir, I know him.

Q. Was he one of the old veteran entrymen?

A. That is my recollection.

Q. Were you present when he made his fin proof?

A. Perhaps so; probably so.

Q. Was his entry handled the same as th others?

A. Yes, sir.

Q. Where was he a resident of?

A. Well, I will have to answer that question i the same way, that these people, that the onl place I ever saw them outside of a trip to Silet was on rare occasions when they would come int the office in Portland. Possibly once or twice met some of them on the street. Other than tha I don't know anything about them.

Q. Who did his cultivation?

A. I don't know. I suppose Blauvelt or som other that was employed there.

Q. Expenses for the cultivation were paid b Jones?

A. I think so.

Q. Who arranged for the proof witnesses o these various entrymen?

A. Well, I don't know.

Q. Would you say that you don't know?

A. No, I don't know.

Q. Did you arrange for them?

A. Not to my recollection, I did not.

Q. Were you present at the proof?

A. I think I was.

Q. Were the questions gone over with the entrymen before they made their answers?

A. Not to my knowledge. At least I did not go over them.

Q. Who did?

A. Nobody to my knowledge.

Mr. Goldstein: I offer in evidence the certified record of Edward C. Brigham.

Mr. Hall: Same objection.

(Whereupon said paper was admitted in evidence as Government's Exhibit 7.)

Q. Do you know William Teghtmeier?

A. Yes, I remember that one.

Q. Where was he a resident of?

A. Well, I will have to make the same answer in regard to him as I have in regard to the others.

Q. He was one of the old veteran entrymen, too, was he?

A. To my recollection.

Q. You handled his—

A. I think I can—I think I acted for him.

Q. At whose request?

A. Mr. Jones'.

Q. Who paid the expenses for his proof?

A. I paid them, without doubt, if I appeared for him, which I think I did.

Q. Who reimbursed you?

A. Mr. Jones.

Q. In no event did you receive any money from any of the entrymen?

A. In no case.

Q. Their expense in making the trips were paid by whom?

A. I think in some cases at least I paid them.

Q. In that case you would be reimbursed?

A. Yes, sir.

Q. By Mr. Jones?

A. Yes, sir.

Q. Of what place was Mr. Teghtmeier a resident?

A. Well, I saw him in Portland at Jones' office.

Q. Was he a resident of Portland at the time this proof was made?

A. In the same way as the others, as far as I know, I was in Portland.

Q. In what way was his cultivation made?

A. By those same employees, I think.

Q. They were paid by whom?

A. Mr. Jones.

Mr. Goldstein: I offer in evidence a certified record of Mr. Teghtmeier.

Mr. Hall: Same objection.

(Whereupon said paper was admitted in evidence as Government's Exhibit 8.)

Q. Do you know Thomas Johnson?

A. Yes, sir.

Q. Was he one of the veteran entrymen?

A. Yes, sir.

Q. Did you handle his case?

A. Yes, sir, I think so, in the same way.

Q. In the same way as the others?

A. Yes, sir.

Q. Of what place was he a resident?

A. Well, I have seen him in Portland the same as I have seen the others. I saw him at Jones' office, possibly.

Q. Would you say he was a resident of Portland at the time that the final proof was made?

A. To the same degree as the others were.

Q. That is, they had their home in Portland?

A. So far as I know.

Q. By who was the cultivation made in the case of Johnson?

A. By the same people—same employee that did in the other cases.

Q. Employees of whom?

A. Mr. Jones.

Q. And paid by whom?

A. Mr. Jones.

Q. All the expenses in connection with Johnson's patent?

A. Paid in the same way.

Q. By Mr. Jones?

A. Yes, sir.

Mr. Goldstein: I offer in evidence a certified record in the case of Mr. Johnson.

Mr. Hall: Same objection.

(Whereupon said paper was admitted in evidence as Government's Exhibit 9.)

Q. Do you know Daniel Clark?

A. Yes, sir, I knew him.

Q. Was he one of these veteran soldiers?

A. Yes, sir.

Q. Where was he a resident of at the time his proofs were cancelled?

A. Well, I would make the same answer in regard to him as I made in regard to the others. I knew of him in Portland.

Mr. Hall: We object to taking any testimony as to Daniel Clark for the reason he is not one of the parties set forth in plaintiff's complaint.

Q. Was the case of Clark handled pursuant to the same general scheme of handling the old soldiers?

A. To my recollection, yes, sir.

Q. Did you appear as one of his witnesses?

A. I don't remember that I did, or whether I did or not. I cannot say.

Q. Do you know George F. Merrill?

A. Yes, sir.

Q. Was he one of the veteran entrymen?

A. He was.

Q. Did you have any connection with his--

Mr. Hall: Counsel for defendant objects to taking any testimony regarding the homestead of Mr. Merrill, for the reason that he is not one of the claimants mentioned in the complaint.

Q. Was his entry handled in pursuance of the

same general scheme with reference to the old soldiers?

A. Yes, sir.

Q. Were you acquainted with him prior to handling his case?

A. Well, I don't remember. Possibly I was. In the case of Merrill, I am not certain about that.

Q. Were you acquainted with the land embraced in his entry?

A. I was.

Mr. Hall: The same objection goes to all of this. That will be conceded?

Mr. Goldstein: Oh, sure.

A. Yes, sir, I was acquainted. I have been on his claim.

Q. What did you find on his claim?

A. At the time I was on it, I found nothing but timber.

Q. Did you find any cultivation?

A. No, sir.

Q. Did you find any habitation?

A. No, sir.

Q. Did you pay his fee for filing?

A. That is my recollection.

Q. Who reimbursed you for the payment of the fee?

A. Mr. Jones.

Q. Do you know anything about his residence?

A. The same as the others, so far as I am aware.

Q. That is, came in in the morning and left at night, or just one day's.

A. Yes, sir. Two or three days in the case of Mr. Merrill, possibly, on one occasion.

Q. Do you know whether any improvements were made by Merrill himself?

A. I think not. Not to my knowledge.

Q. If any improvements were made on the land, by whom were they made?

A. They were made by this same man that made the other improvements, so far as I know.

Q. You mean employees of Mr. Jones?

A. Yes, sir.

Q. And paid by whom?

A. Mr. Jones.

Q. Is this your signature to the affidavit made before the Land Office (showing paper to witness)?

A. Yes, sir, that is my signature.

Mr. Goldstein: I offer in evidence the record of the homestead entry of George Merrill.

Mr. Hall: Counsel for defendant objects to the introduction of the same for the reason that it is irrelevant and immaterial. It does not tend to prove any issue in the plaintiff's cause of action.

Q. For whom did you do these services for Merrill?

A. In pursuance of the same general scheme or plan or arrangement.

Q. For Mr. Jones?

A. Yes, sir.

Q. He paid you?

A. The fees?

Q. No, in the way of expenses?

A. All expenses. All expenses and all fees of every character were paid by Mr. Jones in all those cases.

(Whereupon the paper just offered in evidence was received in evidence as Government's Exhibit 10.)

Q. Referring to Government's Exhibit No. 10, which consists of a receipt given to George F. Merrill in the sum of sixteen dollars by William Galloway, Receiver of the United States Land Office at Oregon City, June ——, 1902, covering the amount of fee for the entry of the northeast quarter of the southwest quarter, the north half of the southeast quarter, section 32, and the northwest quarter of the southwest quarter of section 33, in township 8 south, range 10 west, together with the affidavit of George F. Merrill under date of June 10th, 1902, on Form 4-065, certifying to his service in the United States Navy during the Rebellion, together with affidavit of George F. Merrill under date of June 10th, 1902, certifying that he had made settlement on the tract of land embraced in his homestead application and that there were present at the time, among others, T. S. Potter, and that ever since that time he had maintained his residence thereon continuously, and that his improvements consist of a good house about sixteen feet square,

about two miles of good trail, a small orchard, and one and a half acres of cleared land, that the value of such improvement is about $350, and that there are no improvements on said tract of land save those put there by the affiant, together with affidavits of T. S. Potter and James Lamphier deposing that they are acquainted with the contents of the applicant's affidavit and that the statements therein contained are true, together with the homestead affidavit of George F. Merrill, Form 4-063, deposing that the application was made in good faith for the purpose of actual settlement and cultivation and not for the benefit of any other person, together with certified copy of his honorable discharge from the United States service, together with his non-mineral—together with the non-mineral affidavit of George F. Merrill, together with his application, No. 14224, on Form 4-007—now, Mr. Potter, did you or did you not know at the time you made this affidavit, which you testified bears your signature, was untrue at the time you made it?

A. I don't quite understand the question.

Q. Do you know whether or not the affidavit you made, to which your signature is attached and about which you have testified, contains a true statement of the facts?

A. Well, it does according to my interpretation of the facts

Q. That interpretation of the facts coincides with the interpretation of Mr. Jones?

A. As far as I know.

Q. What about the cultivation to which Mr. Merrill made affidavit that he had cultivated the place and that about one and a half acres were cleared and that the value of the improvements was about $350?

A. Well, I think there had been some clearing made there at that time.

Q. How about the crops?

A. I think there had been some fruit trees planted on the place and some grass seed sown, and possibly some vegetables planted there.

Q. Was that the extent of the improvements?

A. There was some trail made up the river to that place which was entitled to go as an improvement.

Q. I show you this form of contract signed by Mr. Merrill and ask you if that is the same form of contract you have seen in all cases with respect to these old soldiers who entered upon the land in accordance with the general plan or scheme you had with Mr. Jones?

A. Yes, sir.

Mr. Goldstein: It is stipulated between counsel that this form of contract purports to be the same as set out in plaintiff's bill of complaint.

(Whereupon said paper was admitted in evidence as Government's Exhibit 11.)

Q. Your testimony, Mr. Potter, with respect to first locating the widows of soldiers on these Siletz lands—was that all in accordance with the understanding had with Mr. Jones?

A. Yes, that was the beginning of the plan.

Q. Later it was changed so as to get the old soldiers instead of the widows?

A. Well, the location of the soldiers' widows preceded in time the location of the soldiers themselves by some years, as I remember it.

Q. The method was the same?

A. The method, so far as I know, and I am familiar with it, was as I have indicated in my testimony.

Q. Do you recall among those widows Hattie C. Allebach?

A. Yes, sir.

Mr. Hall: The same objection to the introduction of testimony regarding the widows' claims as heretofore made.

Mr. Goldstein: As I understand, the contract is in the possession of Mr. Jones. I ask at this time that you produce it.

Mr. Hall: At the trial?

Mr. Goldstein: At the trial in connection with this deposition.

Mr. Hall: Well, if we can find it.

Q. Mr. Potter, your appearance for Hattie C. Allebach was made at the request of Mr. Jones?

A. Yes, sir.

Q. Is this your signature (showing paper to witness)?

A. That is my signature, yes, sir.

Mr. Goldstein: I, at this time, offer in evidence the record showing the application of the homestead entry of Hattie C. Allebach.

Mr. Hall: Objected to as irrelevant and immaterial. It does not tend to prove any issue in the case.

(Whereupon said paper was admitted in evidence as Government's Exhibit 12.)

Q. Do you remember G. C. Lawrence?

A. Yes, sir, I remember the name.

Q. Was he one of the old veteran soldiers for whom you filed on this land?

A. I think so, but I am not sure that I attended to that case.

Q. In accordance with the original plan of Jones?

A. Yes, sir.

Mr. Hall: The defendant objects to any testimony in regard to the Lawrence claim, for the reason that it is not included within the complaint.

Q. Do you remember meeting Mr. Lawrence in your office in the Chamber of Commerce building regarding his entry?

A. No, I do not. Doubtless I did meet him there, but I don't remember the circumstances now.

Q. Do you remember preparing any affidavits for him to sign?

A. No, sir, I don't recall the circumstances now.

Q. Summarizing your testimony, Mr. Potter, would you say whether any of these entrymen for whom you filed ever established a continuous residence upon the land?

A. None of them lived there all the time, to my knowledge.

Q. Summarizing the testimony, would you say that there was any of these entrymen for whom you filed whoever themselves cultivated the land?

A. None of them to my knowledge.

Q. And the cultivation in all cases was done at whose orders?

A. It was all done by Mr. Jones or his agents.

Q. And who paid for the cultivation, so far as you know?

A. Mr. Jones, so far as I know.

Q. Who paid for the expenses and fees in connection with these homestead entries?

A. Mr. Jones.

Q. Did Mr. Jones ever discuss with you how he could make money by locating these old soldiers on the land?

A. I never talked with Mr. Jones about the old soldiers in that way.

Q. Did he discuss with you how he proposed to profit by this?

A. We talked about the soldiers' widows.

Q. Did he ever discuss with you how he was to profit by locating soldiers?

A. No, sir.

Q. Do you know how he was to profit?

A. I know the terms of the contract.

Q. How do you know as to how he was to profit?

A. Well, I know the terms of the contract which provides for a payment or securing of a sum sufficient to pay all the expenses and to provide an additional amount by way of profit for doing the work.

Q. Now, what was Wells' connection with this scheme, so far as you know?

A. Well, he was one of the entrymen.

Q. In addition to that, what was he to do, if you know, with respect to finding soldiers and locating them there?

A. I think possibly he did some of that, although I don't know anything about that to my own knowledge.

Q. Do you know a man by the name of Gottlieb Heinz of McMinnville?

A. No, sir, I do not.

Q. Do you remember a man who contested your claim?

A. I remember there was such a contest.

Q. Do you remember the name of the man?

A. Possibly it was Heinz; I don't remember.

Q. Represented by a man named Clark of Oregon City?

A. Perhaps so.

Mr. Hall: Same objection goes to this testimony as irrelevant and immaterial.

Q. How was that contest settled?

A. I think by some sort of a compromise.

Q. With whom.

A. With the contestant, whoever he was.

Q. Between whom?

A. Between him and me.

Q. What was the nature of the compromise?

Mr. Hall: Same objection.

A. I paid him something, I think, to relinquish his contest.

Q. Who paid you?

A. Mr. Jones.

Q. Do you know a man by the name of L. I. Butterfield?

A. No, sir.

D. Do you know a man by the name of F. W. Butterfield?

A. No, sir.

Q. Do you know a man by the name of J. P. Savage?

A. No, sir.

Q. Were any of these entrymen required to pay any money for locating them?

A. No, sir, except in so far as that was covered by the contract.

Q. What was the consideration moving from them?

A. The consideration moving from the applicants?

Q. Yes.

A. Well, I don't know as there was any consideration moving from them. I suppose they wanted to get their claims.

Q. What became of the receipts at final proof?

A. Well, I don't remember whether I kept them or whether I turned them over to Mr. Jones or what did happen to them.

Mr. Hall: In what cases, Mr. Goldstein?

Mr. Goldstein: In connection with these entrymen.

Mr. Hall: Some of the receipts would be surrendered; others were not.

CROSS EXAMINATION.

By Mr. Hall:

Q. Mr. Potter, you testified that you came to Portland about 1893?

A. 1889.

Q. Where did you reside prior to coming to Portland?

A. Immediately prior I lived in Idaho?

Q. How long had you lived in Idaho?

A. With the exception of two years I lived there since 1871, previous to that time.

Q. What state were you a native of?

A. Missouri.

Q. I will ask you if you lived in a portion of

Idaho where there were public lands open for homestead settlement?

A. Yes, sir.

Q. I will ask you whether or not while living there you became familiar with the practices of settlers as to residence and cultivation under the general homestead law?

A. Yes, sir.

Q. You have testified that you were officing with the defendant Jones in Portland prior to 1900 for some time.

A. Yes, sir.

Q. Were you and Mr. Jones in partnership?

A. No, sir.

Q. When you first went there what was Mr. Jones' business?

A. When we were first in an office together his business was dealing in land scrip, so far as I know. Possibly he might have been employed in the City Engineer's office as an engineer, but I am not positive as to the dates.

Q. Had he had such employment?

A. He had had such employment after I had got acquainted with him. When I first got acquainted I think he was employed as deputy engineer in the City Engineer's office.

Q. About when was it that these widows of old soldiers came under consideration by Mr. Jones?

A. Well, as well as I remember, it must have

been about 1899, possibly 1900; but my recollection is it was 1899 when the thing was started.

Q. And that enterprise, as I understand your direct testimony, was the locating the widows of old soldiers upon public lands in Oregon?

A. Yes, sir, in the Siletz Indian Reservation.

Q. I will ask you whether or not you endeavored to familiarize yourself with the United States land laws in regard to those widows' homesteads?

A. Yes, sir, I did at that time.

Q. I will ask you whether or not you endeavored to follow out those laws as you interpreted them?

A. Yes, sir.

Q. Do you know whether or not the defendant, Mr. Jones. had any other intention as evidenced by any declarations by him or otherwise that would indicate that he was not intending to comply with the law in regard to obtaining those widows' homesteads?

A. No, sir; the contract expressed his intention, so far as I know anything about it.

Q. Who drew the contract?

A. I prepared the contract in the first instance.

Q. I will ask you whether in preparing that contract you endeavored to prepare it in conformity with the land laws of the United States?

A. I did. I investigated the subject to the extent of my ability and endeavored to make that contract conform to the law.

Q. Was it your opinion from such examination

that you made, that widows were not required to reside upon the land?

A. That was the holding of the Land Office Department at the time.

Q. And you had read those decisions?

A. Yes, sir.

Q. And upon such authority you advised Mr. Jones?

A. Yes, sir.

Q. What became of those widows' homesteads, if you know? Did they go to patent?

A. No. Final proofs were taken in some cases, but my recollection is that the Commissioner's office or the Department of the Interior changed their ruling some way or other so that it invalidated the whole procedure afterwards; but what that ruling was or the Commissioner's holding was, I don't now recall.

Q. And I understand you that a contract of some kind in writing was entered into between Mr. Jones and these several widow applicants which set forth Mr. Jones' duties that he was to perform and whatever compensation, if any, he was to receive?

A. Yes, sir.

Q. And in those cases, I think I already asked you whether there was any other arrangement, oral or otherwise, between Mr. Jones and these widows except as expressed in the written contract?

A. No, sir; if there was any collateral agreement between them, I knew nothing about it.

Q. Do I understand you, so far as your knowledge and recollection goes, that no patents issued to any of these widows that Mr. Jones had contracted with?

A. I think not. None to my recollection.

Q. Then, about when, if you recall, was the inception of this arrangement with the old soldiers that you have testified about?

A. Well, my recollection is not explicit on that, but I think it must have been about 1901. It was some considerable time, at any rate, after the soldiers' widows' claims were filed.

Q. Now, you have identified a contract which I think is marked Plaintiff's Exhibit 4 that was prepared to be executed by each one of the old soldiers that Mr. Jones should locate in the Siletz. I will ask you whether or not you prepared that contract?

A. That contract was a modification of the contract with the soldiers' widows. I don't remember that I prepared that. I don't think I did. Possibly I did.

Q. I will ask you whether or not, if you did not prepare it, you examined it to determine its legality?

A. Yes, sir.

Q. At whose request?

A. Mr. Jones'.

Q. What steps, if any, did you take to deter-

mine its legality as to looking up law and land decisions?

A. Well, I looked up such decisions as I had access to and looked up the general land laws of the United States and the holding of the courts, and I came to the conclusion that it was a valid contract.

Q. I will ask you whether or not you ever consulted any of the officers of the Land Office of the United States or any officers of the United States and submitted to them this contract?

A. I did.

Q. Whom?

A. Dr. Loomis, Special Agent of the Land Office or Interior Department; I don't know just his title; but he was connected with the Land Office at Oregon City and was the first man that ever examined it at my request.

Q. You submitted to him the contract as was finally used?

A. Yes, sir.

Q. And what opinion did he give you? Just state the circumstances, won't you, Mr. Potter, if you recall them?

A. Well, some one of the applicants had mentioned in the hearing of the land officers that there was a contract in connection with it. They evidently had sent this special agent, Mr. Loomis, to see me about it to know what the nature of that contract was. I showed him the form on which

these contracts were made, and I explained to him that I wanted to know whether or not in the construction of the Land Office officials it was valid and legal, if the land officers held that it was not valid I didn't want to have any further connection with the case. He took the contract away with him and told me that he would let me know in a few days. A few days after he did send word that it was valid. Both the Register and Receiver spoke of that in my hearing, although not to me—spoke of it as a valid contract. That was all my experiences in that respect—that is, with the land officers.

Q. I will ask you this question while I think of it: Do you have any knowledge of any other or different arrangement had between Mr. Jones and any of these old soldier settlers mentioned in the complaint than is contained in the terms of that contract?

A. I have not.

Q. Mr. Potter, at the time of making this contract and the entering into between Mr. Jones and the old soldiers, what was your belief and opinion, if any, as to whether or not the requirements of a settler on land in the Siletz was any other or different than under the general homestead law?

Mr. Goldstein: That is objected to on the ground that it is incompetent, irrelevant and immaterial as to what his opinion may be without having that

opinion shown to be the opinion of Mr. Jones expressed to Mr. Potter.

A. I supposed it was the same.

Mr. Goldstein: That is not the question.

Q. (Question read.)

A. No, I was not aware of any difference.

Q. I will ask you whether or not you believed them to be the same at that time?

A. Yes, sir.

Mr. Goldstein: Same objection.

Q. I will ask you whether or not you so advised Mr. Jones?

A. Yes, sir.

Q. In that matter you were acting as his legal counsel?

A. Yes, sir.

Q. I will ask you whether, Mr. Potter, at that time to your knowledge the land offices or courts of the United States had construed the law passed May 7th, 1900, which was an amendment to the act passed in 1894, and whether that had been construed with reference to the meaning of the words "actual settlers" therein contained prior to that time?

Mr. Goldstein: That is objected to on the ground that the laws speak for themselves.

Mr. Hall: I asked at that time if he knew that the law had been construed by the court?

Mr. Goldstein: No proof yet of any construction by the court.

A. I thought the Commissioner's office had construed that law. That was my understanding.

Q. What construction did you understand they had put upon it?

A. In regard to actual settlement?

Q. Yes.

A. Well, my understanding at that time was that actual settlement was not necessary in all cases. That is, there was certain cases where actual residence was not required upon the land. One was, as I remember, physical inability to make a living on the land, and in another case they had held where climatic conditions were such as would preclude the claimant from gaining a livelihood upon the land in question he did not have to live on it. That was the holding of the Department, as I understood them, at that time.

Q. That was as to entries under the general homestead act?

A. Yes, sir.

Q. Now, I will ask you whether or not, from your residence in Idaho, a public land state, and your residence in the State of Oregon, as a public land state, you became familiar with the practice and custom of settlers under the general homestead act as to settlement and cultivation?

A. Yes, sir.

Q. I will ask you whether or not it is not a fact, Mr. Potter, that within the public land states it was considered that if a man was not absent

from his homestead for a period exceeding six months, that, so far as residence was concerned, he complied with the law?

A. That was always my understanding.

Mr. Goldstein: That is objected to on the ground that the general homestead law is not in controversy; that these lands were entered under a special act relative to the Siletz Indian lands.

Q. Then, I will ask you again, Mr. Potter, whether or not you, as an attorney, believed that if the old soldiers homestead settlers, going into Siletz performed the same amount of residence as an ordinary settler would under the general homestead law, that he would be complying with the law?

A. Yes.

Mr. Goldstein: That is objected to upon the ground that his belief is not in question, and the laws speak for themselves.

A. Yes, sir; that was my understanding of it.

Q. State whether or not that you, as Mr. Jones' counsel, so advised him that that was your understanding and belief.

A. Yes, sir, I did.

Q. Now, what was your understanding of the law as to whether or not the time of service of a soldier who had served in the Union Army during the Civil War would be deducted from his time of residence required with the exception, of course, of the one year?

Mr. Goldstein: That is objected to on the ground that it is not proper cross examination, that matter not having been gone into on direct; further on the ground that it is incompetent, irrelevant and immaterial, in view of the fact that the laws speak for themselves.

A. Yes, I understood that the claimant was entitled to credit for his military service on his time.

Q. And when you wrote the letter—plaintiff's exhibit No. 2—dated Portland, Oregon, March 19th, 1901, addressed to Mr. Addison Longnecker, in which you say, "It will be necessary for you to visit your homestead on the Siletz during the present month. Kindly call at once on Mr. W. N. Jones or Mr. J. L. Wells, who will make the necessary arrangements for your trip." I will ask you whether or not that was in pursuance of your belief as to the amount of residence necessary, and to call his attention to the fact that he should not let six months go by without visiting his claim?

A. Yes, sir; it was my impression that it was a technical compliance with the law if he was only on that claim every six months.

Q. I will ask you whether or not, Mr. Potter, you have examined into the decisions of the Land Department to ascertain whether or not a residence of that kind has met with their approval to such an extent that they would grant a final receipt?

A. I think so in some cases.

Q. What were the physical conditions, so far as you know, of these old soldiers?

A. Well, they were veterans of the Civil War. They were pretty old men and not very strong, getting rather advanced in years, very largely physically incapacitated to a considerable extent.

Q. Now, you may just state, Mr. Potter, what the usual process was that was gone through with these old soldier settlers in order to obtain title to their land?

A. They first went out and—first they went onto the land. That was supposed to be necessary to make what I understood to be an act of settlement in accordance with the Department's ruling. Then, after that, they made their filing. Then, if no commutation was made at the expiration of the statutory period they would make their final proof after making proper advertisement of that fact, which consisted in calling two witnesses, and the testimony of the claimant himself. The testimony of the witnesses were taken by the Land Office upon forms—upon printed forms prepared for that purpose, upon the questions to be propounded to the applicant himself and likewise to his witnesses; and the process of taking the proof consisted in reading by the Register and Receiver to the applicant and his witness, as the case might be, the particular question or series of questions, and writing down the answers. Then upon that statement, if considered sufficient by the land offi-

cials—if the proof was considered sufficient, they issued what they termed a final receipt. That closed the case, so far as the Land Office was concerned.

Q. In the practice of the Land Office, was it the practice of the Register or Receiver, or any other representative of the Government of the United States or Land Office, to further cross-examine or examine either the applicant or the witnesses, if they so desired?

A. It was so done. It was done in some of these cases, yes, sir.

Q. Now, at what period is a settler supposed to or required to establish his residence by the construction of his house?

Mr. Goldstein: Objected to on the ground that the law speaks for itself.

A. Within six months of filing the—

Q. Now, you testified that you showed Mr. Gannon his claim at the time of entry. Do I understand you that was at the time of his first visit?

A. That was the time of his preliminary visit to the land, yes, sir.

Q. At that time there was no cabin or improvement on the land?

A. No, sir; not at that time.

Q. That, so far as you know, would apply to each of the nine men who are included in this complaint?

A. So far as I was familiar with the land when

they made their first visit there, there was nothing of that description on the claim.

Q. Now, these nine men whom I will mention: Benjamin S. Hunter, Oliver I. Conner, William Teghtmeier, R. D. Depue, Joseph Gillis, Thomas Johnson, Ed C. Brigham, Anthony Gannon, and J. L. Wells—how many of those, if you know, had a cabin constructed upon their premises within six months after the date of filing?

A. I think those cabins were all put in there within that period.

Q. How many of those cabins of the men just recited to you have you visited?

A. I have been to two or three of them.

Q. And will you state what kind of cabins they were?

A. Well, they were just log cabins built out of logs with a door and a window in them.

Q. A roof?

A. Glass window and a roof on them.

Q. Were they habitable?

A. Yes; I am living in one now a good deal like it.

Q. Now, to what extent would you say that these claims that you visited of these read to you were cultivated—that is, cleared or prepared for cultivation?

A. Well, the one that I saw as I have testified on direct examination had a patch cleared off perhaps an acre or more in extent, the brush cut off

at that time, and there were some fruit trees planted there and at the time that I saw them there were some potatoes growing on some of them that I recall. There was some grass seed had been sown there, and perhaps some other vegetable.

Q. Had you been on other parts of the Siletz Reservation on claims or seen claims not included in any that Mr. Jones was interested in?

A. Yes, I have seen some other—I have been over some other portions of that territory there.

Q. Generally, how would the improvements on the claims that are here in controversy compare with other claims in the Siletz Reservation?

Mr. Goldstein: That is objected to as incompetent and irrelevant and not proper cross examination. It does not affect the issues in this case.

A. Oh, they are about the same. All of the same general type.

Q. What was the general character of the land as to being open land or timbered land?

A. It was mostly all timbered heavily.

Q. Land, then, that was difficult and expensive to clear?

A. It would be exceedingly difficult and exceedingly expensive to clear; very heavy the timber was, and very dense.

Q. I will ask you whether or not, Mr. Potter, it would have been possible for a settler without means to have gone upon one of these claims and

by living on it and working on it to have supported himself and his family, if he had a family?

A. I don't see how he could.

Q. Would it be possible for him to do it?

A. No; he couldn't produce anything from the land, because in that shape it was not tillable. He simply couldn't live off of the product of the land itself.

Q. How about roads—highways?

A. There were no roads or highways through it or near it. Well, that is wrong. There was one road that approached one section of it, came somewhere near it, but there was no road over the land or any of it, so far as I know.

Q. What was the character of the country as to difficult or expensive construction of roads over which loads could be hauled?

A. It would be very difficult construction through those woods, wet, marshy ground, hilly, irregular country; be very expensive and difficult to build a road.

Q. Is there any pasture land to speak of on these claims that would offer sustenance for teams or stock?

A. Nothing to my knowledge on any of the claims that ever I was on.

Q. Now, you have testified on direct examination that round trip tickets were purchased to Toledo, were they?

A. Toledo would be the nearest railroad point to the land.

Q. What was the object in purchasing round trip tickets?

A. I don't know the object of it. I suppose perhaps a round trip ticket might have been a little cheaper. I don't know.

Q. How long were they good for—do you recall?

A. I do not remember that.

Q. Do you recall whether or not those tickets were not made good until October 31 of the year nineteen—

A. Possibly they were that kind of ticket.

Q. You don't recall?

A. No, I am not positive.

Q. Now, you stated, Mr. Potter, that you had yourself filed on some land over there as a homesteader?

A. Yes, sir.

Q. And on any of these trips that you have testified to were they made for the purpose of visiting your own claim?

A. Yes, sir; several of them.

Q. Did you finally secure patents to your claims?

A. No, patent never issued.

Q. Now, you testified in answer to a direct question of the District Attorney that you had an idea that such residence as was made by these set-

tlers was sufficient in law, or words to that effect. Where did you get that idea?

A. Well, I got that idea from the language of the statutes themselves, from the constructions that were obviously put upon them by the land offices themselves, and from the fact that it was almost the universal custom in those days, and from the further fact that the Land Office officials were thoroughly familiar with the custom and made no objection to it. It was done with the consent and connivance of the Land Office officials themselves, and the universality of the custom itself—from that fact led me to think it was all right.

Q. Now, as to whether or not these settlers only visited their claims once in six months and then only stayed over night or a day or so, you have not any personal knowledge, have you, Mr. Potter?

A. Very few cases. In fact, I have no personal knowledge in any case that they did not. I have testified in a few cases that they did. In a few cases I have testified that they did.

Q. That they did what?

A. In a few cases that they went on there every six months, but I don't want to be understood as testifying that they did not go on at other times. I don't know that. I saw them very rarely, usually not more than once or twice a year; twice a year at most did I see any of these men, and that generally when they were down there or going down there. I was very slightly acquainted with them;

didn't meet them there or anywhere else very often.

Q. Those whom you notified, if you did notify any of them, that it was time to visit their claim, you did that for the purpose of not allowing six months' absence from the claim to occur?

A. That was the idea. That was the purpose of the notification.

Q. Now, so far as you know, Mr. Potter, what was the financial condition of these old soldier homesteaders?

A. Well, they were not in very good financial condition, I think. They did not present that appearance, at least.

Q. In advancing the money for their transportation to and from their claims, the payment of the Register and the Receiver's fees, and whatever money you disbursed, I will ask you whether or not that was done under the provisions and in accordance with the contract that Mr. Jones had entered into with them?

A. Yes, sir, it was.

Q. Now, you were interrogated with regard to the entry of one Merrill—Government's Exhibit 10—do you know what became of that entry?

A. No, sir; not after final proof.

Q. You don't know whether patent was issued for that or not?

A. No, sir, I do not.

Q. Now, I notice that in the Merrill entry in making the final proof you furnished the Register

and Receiver with a certified copy of his discharge from the United States Army covering service during the Civil War. Why did you do that?

A. Well, I presume that was required. That was required in order to obtain a credit for the period of service on the time of residence.

Q. That was the purpose of putting it in?

A. Well, I suppose, as well as I recollect now, that was the reason it was put there. I think it was necessary to do that. At least that is my recollection that it was necessary to furnish evidence of the military service of the applicant in order to obtain credit on his residential period.

Q. I will ask you whether or not in these cases that are here in controversy and which I have enumerated the names of the settlers to you, that the officers of the Land Office at Oregon City allowed these men credit for their service in the United States Army during the Rebellion?

A. Well, I think they did in many of the cases. At least some of the cases were commuted. I presume there was no credit in that case—in those cases.

Q. I will ask you whether or not such evidence was rejected, whether these copies of this charge were rejected as incompetent or for any other reason by the Land Office?

A. No, sir, not to my knowledge.

Q. So far as you know they were considered by them?

A. Yes, sir.

Q. And you appeared, I think you have testified, as the record counsel of these nine men—except Mr. Wells. You have not testified as having appeared for Mr. Wells.

A. Well, I don't remember whether I did or not in his case.

Q. You appeared for the other eight?

A. I think so, to the best of my recollection, I did.

Q. And in the taking of the final proof did it become necessary for you to participate in that to any extent?

A. No, sir.

Q. Did you have any contention or arguments with the officers or clerks there in regard to any of these claimants?

A. No, sir.

Q. Now, what was the object of your appearing there so far as Mr. Jones was concerned?

A. Well, my object in appearing there was to see that the thing was done in a regular way, payment of the fee, to see that everything was done right in connection with it; just to perform the general functions of an attorney in a Land Office case, so far as I know.

Q. Did Mr. Jones have some interests there to be protected for the money that he had advanced and paid out?

A. Yes, he had that interest as shown by the contract.

Q. And did not that necessitate that the proofs be made in a lawful and proper way?

Mr. Goldstein: Objected to on the ground that the contract speaks for itself.

A. Yes, sir; I think so. I was looking after that for Mr. Jones, to see that everything was regular and in order so far as I could, that everything was legitimate so far as I could do so; but I never attempted to interfere with the land officers in the performance of their duties or any such thing as that.

Q. Did Mr. Jones ever suggest to you that you should interfere with them or cause any of these settlers to vary from the law in any way?

A. No, sir.

Q. Now, I think you have testified, Mr. Potter, that you in no way suggested to the claimants the answers that they should make to the questions to be propounded to them by the Land Office?

A. No, sir; I did not.

Q. I will ask you whether or not Mr. Jones ever suggested to you or requested that you should do that?

A. No, sir; he never did.

REDIRECT EXAMINATION.

By Mr. Goldstein:

Q. Mr. Potter, you are still on very friendly terms with Mr. Jones, are you?

A. Yes, sir.

Q. And have been ever since—

A. Yes, sir.

Q. —the transactions in question?

A. Yes, sir.

Q. You were indicted along with Mr. Jones for conspiring to defraud the Government in connection with these lands?

A. Yes, sir.

Mr. Hall: Objected to on the ground that it is incompetent, irrelevant and immaterial and not tending to establish any issue in this case.

A. Yes, sir.

Q. You did not testify at the criminal trial, did you?

A. No, sir.

Q. Now, Mr. Potter, I understood you to say under direct testimony that you were acting on behalf of these entrymen generally in perfecting their claims?

A. Well, I was looking after those things for Mr. Jones, yes. In one sense I was acting for the entrymen likewise.

Q. For whom were you acting as attorney?

A. My name was signed to the papers as the attorney for such and such a claimant; but I was representing Mr. Jones looking after his interests. That was the nature of my work.

Q. In what way were you looking after his interests?

A. To see that all the things were regular, to see that the documents necessary were regular, that the fees were paid, that the service was in the right form, and, so far as I could see, that everything was regularly done.

Q. In what way was Jones to be benefited?

A. Well, he had a contract with these people which would indicate that he was to receive benefits from that.

Q. You drew up the contract, did you?

A. In the first instance, I drew the contract with the soldiers' widows. Afterwards that contract was modified to fit the case of the soldiers themselves.

Q. Who modified it?

A. I don't remember whether I did it or whether Mr. Jones did.

Q. You understood then, as you do now, that some actual residence is necessary before a homesteader is entitled to final proof.

A. Just as I have testified. I understood then that a technical compliance with the law was necessary; that an act of settlement was necessary; and provided a man did not absent himself more than six months from it and could show a legitimate excuse for not being there, that was a valid entry as to residence and cultivation.

Q. It was your intent to comply with the technical requirements of the law?

A. In my case it was.

Q. That was on behalf of Mr. Jones?

A. Yes, sir.

Q. You did not intend to comply with the fair spirit of the law?

A. Well, I don't know what that is. I thought that was sufficient.

Q. You knew the Act of August 15th, 1894, which opened these lands in the Siletz Reservation?

A. I possibly had read it at that time.

Q. You knew that the law required residence of three years—actual residence.

A. I don't know now what the law did require. I was familiar with it at that time.

Q. You knew that none of these entrymen, with the exception of Wells, had commuted?

A. No; I don't know that.

Q. You knew that even in the case of commutation fourteen months' actual residence is necessary?

A. I knew that fourteen months of residence was necessary. I don't know whether that means that a man had to be on the land fourteen months continually or not. I did not suppose that.

Q. You knew that no patent was issued where there was any proof of contract entered into by the entrymen for the alienation of the land prior to its proof?

A. I think that would invalidate the claim, yes.

Q. You knew?

A. I thought a contract to alienate the claim entered into prior to the proof would invalidate it, yes, sir.

Q. You knew that these entrymen did not intend to enter upon the land for agricultural purposes?

A. I don't know anything about what they intended to do.

Q. You knew that the land was not fit for agricultural purposes?

A. Evidently in the opinion of the Department, it was.

Q. I am asking your opinion?

A. It is good agricultural land after the timber is taken off.

Q. You stated on cross examination that it was more valuable for timber than for agriculture.

A. I did not state it was more valuable. I said it was very heavily covered with timber. Very difficult to get that off and very expensive to get off.

Q. Did you discuss with these entrymen their purpose in entering upon the land?

A. No, sir; I very rarely ever talked with any entryman on any subject.

Q. You said that the cabins were habitable?

A. Well—

Q. Were there any floors in the cabins?

A. No, I don't think so.

Q. Would you say that there were beds in each cabin?

A. I didn't say that. I said that there was a bed in the one that I was in.

Q. Did you see any bed in any other cabin that you visited?

A. I don't remember that I did or did not.

Q. Did you see a stove in any cabin that you visited?

A. There was a stove in the one I was in.

Q. Did you see a stove in any other cabin that you visited?

A. I don't remember that I did.

Q. Do you know what "continuous" means?

A. Well, I have a pretty fair idea of what the word means—that is the etymology of it—if that is what you refer to.

Q. Would you say it was continuous to make a visit and come right back?

A. It might be a continuous visit.

Q. Would it be continuous residence as required by law?

A. According to my understanding of the legal requirements, according to my interpretation, as I have explained it already, and so held in some cases by the Department.

Q. Did you know that the court held that to establish a residence under the homestead law there must be a combination of act and intent—an act of occupying and living upon the claim and

an intention of making the same a home to the exclusion of a home elsewhere? Did you know that?

A. What court.

Q. The Federal Court of the United States.

A. When?

Q. In *The United States vs. Richards,* 149 Federal, 445.

A. What date was that? Well, I don't know whether I saw that particular case or not.

Q. Was there any intention on the part of any of the entrymen, so far as you know, as covered by the facts and circumstances of the case, of an intention of these entrymen to live there to the exclusion of maintaining a home in Portland or elsewhere?

A. Not to my knowledge.

Q. You stated on cross that your application for a homestead never went to patent?

A. No, sir.

Q. Why didn't it.

A. I relinquished it.

Q. Why did you relinquish?

Mr. Hall: Objected to as immaterial.

A. My esteemed friend, Mr. A. W. Lafferty, who was at that time agent of the Interior Department, or some department of the United States—that was after the conspiracy trial came around—besought me to relinquish, intimating that it would be a good thing for me to do, intimating that it would help

my case a little bit. So I wrote out that relinquishment and gave it to him. That is the last I ever heard of it.

Q. Would you say that the purpose of entering into these contracts was to secure finally the land for the benefit of Mr. Jones?

A. My understanding of the purpose of the contracts was, or the purpose of the whole scheme was, to make money out of it—to make some money out of it, as a locating proposition, but I didn't understand that there was any agreement for Jones to secure the title to the land.

Q. Did you know as to whether these entrymen ever intended to maintain a home on the land as a residence?

A. I knew nothing about that.

Q. You knew that was not the case, didn't you?

A. I knew the facts of the cases. I have already delineated that in my testimony.

Q. You knew it was the purpose to secure the title to the land from these entrymen as soon as patents were received?

A. No, I didn't know that.

Q. That was the purpose of drawing up the contract?

A. No, I didn't know that was the purpose of drawing up the contract. The contract does not provide for that.

Mr. Hall: I object to these questions as leading.

They are strongly leading. I don't like to object, but they are going pretty strong.

Q. Did you ever see this form of letter from the Commissioner of the Land Office (showing paper to witness)?

A. No, sir; I don't think I ever did. Not to my knowledge. Possibly I might have, but I don't now recall it that I ever did see it.

Q. Did you know that circular letters were being issued by the Land Office warning entrymen that their entries would be cancelled if they had entered into any agreement or contracts to sell any of the lands embraced in their entries?

A. No, sir; if they ever sent any such letters to the entrymen, I didn't know anything about it.

Q. Would you say that these entrymen—these old soldiers—filed upon these lands in good faith to acquire a home?

A. I don't know what their intentions were.

Witness excused.

The question on page 25 of the deposition, "What would be your purpose in requesting him to state that as his residence?" was objected to as leading and suggestive. The objection was sustained, and the portion of the deposition skipped to the question beginning "In the testimony of the claimant, the following question and answer appear," on page 26, where the reading was resumed.

Objection to the question on page 80: "You were indicted along with Mr. Jones for conspiring

to defraud the Government in connection with these lands?" was sustained, on the ground that it was an attempt to discredit the plaintiff's own witness.

Oliver I. Conner, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein.

Q. Mr. Conner, where do you live?

A. Montavilla.

Q. City of Portland?

A. Yes.

Q. And how long have you lived in Montavilla?

A. Fifteen years.

Q. Before that, where did you live?

A. East Portland.

Q. How long did you live in East Portland?

A. About nine years.

Q. Have you lived in any other place during the last twenty-four years?

A. No.

Q. Did you ever make a filing on a homestead in the Siletz Reservation?

A. Yes.

Q. Who first spoke to you about making a filing?

A. Mr. Wells.

Q. John L. Wells?

A. John L. Wells.

Q. Are you a veteran of the Civil War?

A. Yes, sir.

Q. And served how long?

A. Three years.

Q. Just state to the court and jury, please, what Mr. Wells told you with reference to filing upon this homestead land in the Siletz Reservation.

A. Mr. Wells came along one day—he used to come into my shop often, and one day he spoke to me about a homestead. I told him I had no idea of it; and we talked a while, and he said—he went away and he said, "Well, I will see you again."

Q. Speak up louder, please.

A. In a few days he came around again and spoke to me about it and said we had a right to take a claim, and told me how it was and all about it. And I told him I had no money to take the claim with. And he said that he could find me a man that would loan me the money to go on with it.

Q. Mr. Conner, could you speak a little louder? It is almost impossible to hear you.

A. I said I would think about it. He told me where to go over town. So in a few days I went over, I think in the Worcester building, and Mr. Wells was there, and he introduced me to Mr. Jones.

Q. Where did he introduce you to Mr. Jones?

A. I think it was in the Worcester building.

Q. Here in the City of Portland?

A. Yes.

Q. Go ahead.

A. And we talked a while about claims, and Mr. Jones told me what he would do. And I told him I would think it over a few days and let him know. And in a few days I went over again. I began to think I wanted a homestead if I could get one. And Mr. Jones made the proposition that he would loan me the money and make a contract. He was to loan me the money, and I was to file on the claim. And after I had made the final proof why, then, I was to give him a mortgage on the claim for the $200. And we done that way. That is all there is to that business.

Q. What was he to do for you in connection with that application that you were to make, what was Mr. Jones to do about cultivating and improving the land, if anything? Was there anything said about that the first conversation you had?

A. I don't remember whether there was or not.

Q. Did you ask Mr. Jones whether you had to live on this place in Siletz?

A. Why, they had already told me.

Q. What did they tell you about that?

A. They told me I didn't have to live on it.

Q. He told you you didn't have to live on it?

A. Yes; had to visit it every little while, every two or three months.

Q. Did he know where you were living at that time—Mr. Jones—do you know?

A. What is that?

Q. Do you know whether Mr. Jones knew where

you were living at that time?

A. Yes, he knew where I was living.

Q. You were living at that time at East Portland?

A. Yes.

Q. And the first time he told you you didn't have to live on the land at all but just to make a visit?

A. Make a visit once in a while.

Q. What, if anything, did he say about having you pay any money for locating on the land? Were you to pay him anything for it?

A. I don't understand.

Q. Were you to do anything at all until you got final proof, until you got patent to the land? Was there anything to be done by you?

A. Why, yes. There was to be improvements made, house built and a little land cultivated, and so on.

Q. Who was to do that?

A. Well, I was to do it, or have it done.

Q. Well, who did it?

A. Well, there was some men down there that done it. I don't know who they were now.

Q. Who ordered them to do it?

A. I suppose Mr. Jones did. I didn't.

Q. Did you have anything to do with it at all?

A. No.

Q. You made no arrangements at all about the cultivation or improvement?

A. No.

Q. And did you make any payments for the cultivation or improvement, did you?

A. No.

Q. And how many visits did you make there?

A. I think about three.

Q. And how long did you stay on each visit?

A. Well, didn't stay very long.

Q. About how long each visit.

A. Oh, just to go on the claim and look around and come off again.

Q. Just go and come back?

A. Yes, just go and come back.

Q. And who took you down there?

A. Why, I think the first time it was Mr. Wells went.

Q. Who paid your expenses on the trip?

A. Mr. Wells.

Q. Did you outlay any money yourself?

A. No.

Q. And after you got there who paid the expense for the board and lodging for the night or two?

A. Well, I don't know about that. We stopped at the camp over night. You see, it would always be night when we would get there.

Q. Did you see your claim?

A. Yes.

Q. Who pointed it out to you?

A. I don't know. One of the men in the woods, I don't know his name.

Q. Did he show you the corners?

A. No. He just took me up on the side of the claim. "Now," he says, "this is your claim."

Q. Was there any board or mark, or any sign?

A. No, no.

Q. He just said, "This is your claim?"

A. Yes.

Q. Then what did you do after you saw it?

A. Oh, I walked around a little while and started back.

Q. And that was the first visit?

A. That was the first, yes.

Q. What did you do on the second visit?

A. About the same way.

Q. Did you see any building on your claim?

A. Yes, the next time there was a building and a little clearing.

Q. Did you sleep in that building?

A. No.

Q. Did you ever sleep in it?

A. No.

Q. Did you ever live on your claim at any time?

A. No.

Q. Did you ever make any clearing or improvement on your claim?

A. It was made by the men in the woods. I didn't do it.

Q. Was Jones along the second time?

A. No, I don't think Jones was along. I don't remember his being there at all.

Q. Was he ever along on any of these visits?

A. I don't think he was.

Q. Who paid you the expense money on the second trip?

A. The second trip?

Q. Yes.

A. I think on the second trip that Jones gave me money to pay the expenses for all of us.

Q. You were in charge, then, of others?

Court: Mr. Goldstein, the court will adjourn now.

Adjourned until 10 o'clock tomorrow morning.

Portland, Oregon, December 4, 1918, 10 A. M.

Oliver I. Conner resumes the stand.

Q. Mr. Conner, I believe you testified yesterday that you were living in East Portland at the time you were approached by Mr. Wells to file on a homestead claim?

A. Yes.

Q. And at that time what business were you engaged in?

A. Barber business.

Q. You had a place of your own, did you?

A. No, it was a rented place.

Q. You had a rented place?

A. Yes.

Q. How many chairs did you have?

A. Only one.

Q. And did you have a family?

A. Yes.

Q. And what did that family consist of?

A. My wife and two children.

Q. And they continued to live there, did they, during the time this claim was pending?

A. What is that?

Q. You all continued to live there during the time this claim was pending?

A. I can't understand that.

Q. How long did you live at that place there in East Portland?

A. Oh, I was only about three years there.

Q. And during what years?

A. Well, I don't remember the years.

Q. Was it while this claim was pending?

A. Yes.

Q. The first you knew about any homestead claim was when Mr. Wells came to speak to you about it and introduced you to Mr. Jones?

A. Yes.

Q. What, if anything, did Mr. Jones tell you as to whether you had to live upon the land and make that your home?

A. He told me I didn't have to live on it.

Q. Did Jones ever visit your place of business in East Portland?

A. I think he was there once.

Q. And how long after you went and saw Jones did you enter into a contract with him?

A. Well, I don't remember. It was a few days later.

Q. Did he pay you any money then?

A. No.

Q. How soon after that did you go to Oregon City to file?

A. Well, I don't remember how long it was. It wasn't very long.

Q. Who paid your expenses to Oregon City?

A. Why, I think it was Mr. Wells.

Q. Did you file at Oregon City before you visited the land?

A. Yes.

Q. Who gave you the description of the land?

A. Why, I don't know whether it was Mr. Jones or Mr. Wells. They showed me the numbers of the claims to be filed on.

Q. You didn't know then on what claim you were filing?

A. Not then.

Q. And where was this description furnished you? In the office of Mr. Jones?

A. No, I don't think so. I don't remember.

Q. You don't remember.

A. No.

Q. How long after that did you go to visit the land?

A. Why, it might have been a week. It might have been ten days. It was shortly after.

Q. Who went with you?

A. I don't remember who went.

Q. Who paid your expenses?

A. Mr. Wells, I think, on the first trip.

Q. Did your wife or family go with you?

A. No.

Q. Did you know Potter before that time?

A. No.

Q. Did you meet him about that time?

A. I met him once over at Mr. Jones' office.

Q. Was he out with you on any one of the visits to the land?

A. Not that I know of. I don't remember.

Q. The first visit you made where did you stop that night?

A. Why, we stopped at the camp that the men had down there.

Q. What is called the headquarters camp at Canoe Landing?

A. Yes; yes, Canoe Landing.

Q. And the next day you went out and visited the land?

A. Yes.

Q. Who went with you?

A. Well, one of the cruisers. I don't know who he was.

Q. Was that all that went with you, one of the cruisers?

A. Yes.

Q. And you went back to Portland, did you, the next day?

A. Yes.

Q. Who paid your expenses on the way back?

A. Why, I think it was Wells—the same man.

Q. How long after that did you make your second visit? How many months elapsed?

A. Oh, two or three months. I don't remember.

Q. Could it have been as many as five months?

A. Oh, no, not five months.

Q. Who asked you to go down the second time?

A. Why, I think it was Wells.

Q. What did he tell you?

A. He said it was time to go and visit our claims again.

Q. And did you go down with him again?

A. I don't think so. I don't think he went that trip.

Q. Who went that trip?

A. I don't know.

Q. Was it Jones?

A. No, Jones didn't go.

Q. Who paid your expenses on that trip?

A. The second trip I think that Jones gave me the money to pay expenses.

Q. Did you take some others with you?

A. There were three or four went along.

Q. How much money did he give you, do you remember.

A. I didn't look at it; didn't count it.

Q. Was it to cover the expenses of the other four as well as yourself?

A. It was to pay the whole expenses.

Mr. Bowerman: That question certainly is very leading.

Court: Yes, that is leading.

Q. Where did you stop the second visit you made?

A. Same place.

Q. At the headquarters camp?

A. Yes.

Q. Who paid all the expenses while you were down there in the way of food and lodging?

A. Well, there was no expenses there.

Q. How about the food?

A. There was some food there in the camp.

Q. Who furnished it?

A. I don't know.

Q. Did you pay any money yourself?

A. No.

Q. You mean the headquarters camp or on the claim?

A. The headquarters camp.

Q. Did you visit the claim that time?

A. Yes.

Q. Who went with you?

A. I went by myself.

Q. How long did you stay there the second time?

A. I went over there and looked at the claim and walked around a little and came back.

Q. And how long after that did you go out there the third time, if at all?

A. Well, we went in periods of two or three months.

Q. And who went with you the third time?

A. Well, now, I don't know. I think it was Wells went that time. I don't know.

Q. Who notified you to go there?

A. What is that?

Q. Did anyone notify you to go there?

A. When the time would come, why, Wells would come around and as he would see us he would tell us about the time, that it was time to go.

Q. When you visited this land did you intend to make that your home?

A. If it suited me, yes.

Q. When you visited the land, did you intend to make that your home?

A. I did if it suited me.

Q. Well, when you visited the land did it suit you then?

A. No.

Q. Did you go to the land the third time? Did you visit your claim the third time?

A. No, I didn't. I started, but I couldn't get there.

Q. So you didn't visit your land the third time?

A. I couldn't get there.

Q. Who appeared as proof witnesses for you, do you know?

A. No, I don't remember who did.

Q. Who paid the expenses to make final proof, in the way of publication of intention?

A. Why, it was Jones.

Q. Did you attend to that at all?

A. What is that?

Q. Did you attend to that at all? Did you have anything to do with that?

A. No.

Q. Who furnished the proof witnesses? Did you?

A. Why, I called my witnesses, but I have forgotten who they were.

Q. Did you pick the witnesses or were they picked for you?

A. Why, I picked them myself, I think.

Q. Do you remember Richard D. Depue?

A. Yes, I remember him.

Q. Do you remember him as one of the witnesses?

A. I think he was. I couldn't say.

Q. Did you ever see him on your claim?

A. No.

Q. Why did you pick him as a witness then?

A. Well, I will tell you—we all knew about what each other's claims were, and so we would ask different ones to be a witness for us. That is all.

Q. Did you see any clearing on your land at any time?

A. Yes, a little clearing.

Q. Who attended to the clearing? Did you?

A. No.

Q. Do you know Joseph Gillis?

A. Gillis? I did know him, yes.

Q. Is he alive or dead?

A. I don't know.

Q. Did you appear as one of the witnesses for Gillis' claim?

A. I don't know.

Q. Were you ever on Gillis' claim?

A. No, not that I know of.

Q. Was Gillis ever on your claim?

A. I don't know.

Q. Gillis was the second witness for you. Do you remember that?

A. Was it Gillis and Depue, my witnesses?

Q. Yes. Do you remember asking Gillis to appear as a witness for you?

A. I think so. I asked both of them.

Q. Did you ever visit the cabin on your claim?

A. Yes.

Q. Did you ever sleep there?

A. No.

Q. How often did you see that cabin or visit it?

A. Twice.

Q. Was it there the first time?

A. Not the first time I went there, no. The second time it was there.

Q. But you were not there the third time?

A. Eh?

Q. Were you there the third time?

A. No.

Q. So you only saw it once?

A. Oh, saw it once; that is so.

Q. Was there anything in the cabin in the way of furniture?

A. No.

Q. Was there any fireplace or chimney?

A. No.

Q. Where did you live during all of this time—in Portland or at Siletz?

A. Portland.

Q. Why did you give Siletz as your postoffice?

A. Well, Jones said that would be—no, he didn't say Siletz. Did I give it as Siletz?

Q. Well, if you did give it as Siletz did you give that information voluntarily or did someone suggest it to you?

A. Mr. Jones told me that would be my postoffice address.

Mr. Goldstein: I offer in evidence certified record of the proof and patent issued to the witness Oliver I. Conner, as one of the nine entrymen mentioned in the complaint.

Mr. Hall: Objected to as incompetent and immaterial for the reason that the Conner claim is not one of the claims that appear now to have been deeded to Jones.

Court: Do you say the Conner claim is not one of the nine claims?

Mr. Hall: It is one of the nine claims, but Mr. Jones never got the claim.

Court: I will overrule the objection.

Mr. Hall: We save an exception.

Marked "Government's Exhibit 15."

Government's Exhibit No. 15, being the exemplified copies of the originals in the files and records of the Patent Office of the United States at Washington, D. C., for the homestead entry, proof, patent and other proceedings for the homestead entry of Oliver I. Conner to the SE¼ of NE¼, the NE¼ of SE¼ of Sec. 4, and the SW¼ of NW¼ and Lot 4, of Sec. 3, in Twp. 9 S., R. 10 W. of W. M., containing 158.72 acres, upon which said application, proof and other proceedings therein contained patent was issued to the said Oliver I. Conner by the United States of America on the 30th day of December, 1902.

Q. Is this your signature, Mr. Conner?

A. I think it is, yes, sir.

Mr. Goldstein: I offer in evidence the testimony of Oliver I. Conner as one of the proof witnesses to the claim of Joseph Gillis, one of the nine entrymen.

Mr. Hall: Same objection.

Court: The Gillis claim is one of the nine?

Mr. Hall: The Gillis claim is one of the nine, but he was not one that conveyed to Mr. Jones.

Court: Are you denying that Jones got the Conner claim and the Gillis claim?

Mr. Hall: Yes, your Honor.

Court: There is an issue as to that?

Mr. Hall: No, there is no issue on that at all. They won't claim that Mr. Jones got any but the Wells claim, the Brigham claim, the Teghtmeier and Johnson claims, at all.

Court: I understand you are denying now that Jones ever got the other claims?

Mr. Hall: Yes. There is no dispute about that, as I understand.

Court: I did not know that that was an issue in this case.

Mr. Haney: It is not an issue at all. It will not be contended that the ultimate title went to Jones in all of these nine claims. But it is contended that Jones was the instigating means whereby the Government was deprived of all nine of them. It does not make any difference whether all nine of them finally got into his hands or not.

Mr. Goldstein: Not only that, but Jones had a mortgage on his claim as well as the Gillis claim.

Court: Very well. The objection will be overruled.

Exception allowed.

Marked "Government's Exhibit 16."

Government's Exhibit No. 16, being the testimony of Oliver I. Conner, as witness on behalf of Joseph Gillis, on Government Form 4-369, for Homestead Entry No. 19088, and subscribed and sworn to before Wm. Galloway, Register of the Land Of-

fice at Oregon City, Oregon, on the 4th day of November, 1901. On the reverse side of which said exhibit is the testimony of Richard D. Depue on behalf of the same claimant, and subscribed and sworn to before the same officer on the same date.

Q. Were you ever on the Depue claim?

A. Not that I know of.

Q. Do you know Brigham?

A. Yes.

Q. Is he alive or dead?

A. Dead.

Mr. Goldstein: I might ask if counsel will admit that the entrymen Depue, Brigham, Johnson, Teghtmeier, and Gillis, are dead? It will save lots of time.

Mr. Hall: I personally know that Brigham is dead. That is the only one.

Mr. Goldstein: How about the others? Do you want us to prove that they are dead?

Mr. Hall: Yes.

Court: Didn't you prove that by Wells?

Mr. Goldstein: Yes.

Court: There is no need to take up much time on that.

Q. Who paid the fees upon the filing of the final proof, in order to obtain certificates, to the Land Office?

A. I don't know who paid them.

Q. Did you pay them?

A. No.

Q. Who paid the publication fees for publishing notices?

A. I couldn't tell you.

Q. Did you pay it?

A. No.

Q. Did you at any time pay any expenses in connection with your visits to the claim?

A. No.

Q. Did you ever at any time take any of your personal belongings from Portland down to Siletz?

A. No.

Q. Was your wife or any member of your family on your claim at Siletz?

A. No.

Q. What was done after final proof was made? What did you do? What was the next thing done?

A. After final proof?

Q. Did you receive a certificate from the Receiver or Register of the Land Office?

A. Yes.

Q. What did you do with the certificate?

A. I left it with Potter.

Q. Where did you leave it?

A. At his office.

Q. Jones' office, too?

A. Yes.

Q. And what did you leave it there for?

A. Well, it was late, and Potter said, "It is late, and you leave the certificate here and I will fix out the mortgage in a few days."

Q. Why did you bring it to him in the first place?

A. What?

Q. Why did you bring the final certificate in the first place to him?

A. Why, so that they could make out a mortgage. After final proof they had to have it, they said, to know if I had made final proof.

Q. Wasn't Potter with you?

A. What is that?

Q. Wasn't Potter with you at the time you made the final proof?

A. I don't know whether he was or not. I can't remember.

Q. Was that the understanding that you had in the first place about leaving your certificate with him?

A. No, that was not the understanding. We went over to the office after we come back from Oregon City and showed them the certificate, the final proof.

Q. What did you want to show them the certificate for?

A. Well, I don't know.

Q. Did he ask you to show it to him?

A. I think he did.

Q. Did he ask you to leave it with him?

A. He said, "Leave it with me tonight, and I will make out the mortgage." It was late.

Q. Did he ever return the certificate to you?

A. No.

Q. Then did you make out a mortgage?

A. In a few days.

Q. Whom did you make out a mortgage to?

A. Mr. Jones.

Q. For how much?

A. I don't remember.

Q. How much money in cash did you receive from Mr. Jones?

A. What is that?

Q. How much money in cash did you receive from Mr. Jones?

A. $200.00.

CROSS EXAMINATION.

Questions by Mr. Bowerman:

Q. Mr. Conner, how long have you lived in Oregon?

A. 24 years.

Q. Where did you live before coming to Oregon?

A. I lived in Iowa.

Q. Which part?

A. Alice County.

Q. In the western part?

A. About the center.

Q. About the center?

A. Central part, I guess.

Q. How long did you live in Iowa?

A. How long did I live in Iowa?

Q. Yes.

A. Why, since 1855.

Q. You were living there at the time of the Civil War, then?

A. Yes.

Q. A member of some Iowa regiment?

A. No, I was in the Regular Army.

Q. Oh, you were in the Regular Army?

A. Yes.

Q. How long after the Civil War was it before you joined the G. A. R.?

A. Oh, it was four or five years, I guess.

Q. You were a member of the G. A. R. at the time the Soldiers' and Sailors' Homestead Law was passed, weren't you?

A. No.

Q. That was passed in 1872.

A. I don't know anything about it.

Q. Don't you know anything about that?

A. No.

Q. In those days did you attend the G. A. R. meetings pretty regularly?

A. No, I didn't attend. I belonged to a Post, but I didn't attend the meetings very much.

Q. Didn't attend them?

A. No, sir.

Q. What was your understanding about the right of a soldier to a homestead when you were still living in Iowa? What understanding did you have of the law?

A. My understanding was that we were entitled to a homestead.

Q. Did you understand that you had any different rights from a man who was not in the Army?

A. I understood that our time in the Army went on the time of our homestead.

Q. What did you understand as to the necessity of a soldier staying on a homestead continuously?

A. What is that?

Q. What did you understand as to the requirements of the law as to a homestead veteran staying on the homestead continuously?

A. Why, I understood that we had to stay six months on the homestead.

Q. Six months?

A. Visit it every six months.

Q. Visit it every six months?

A. That I understood was the law.

Q. That was your idea of the law when you still lived back in Iowa?

A. Yes.

Q. And that was your idea when you filed on this claim?

A. Yes.

Q. I say, you had the same opinion when you filed on this claim?

A. Same idea, yes.

Q. You had entertained that view of the law for how many years?

A. Oh, I don't know how many.

Q. 30 or 40 years?

A. Yes. No, not that long.

Q. What is that?

A. Not that long.

Q. 25 or 30, anyway?

A. Yes, probably.

Q. That was an opinion of the law that was held generally by the veterans in the Civil War, wasn't it?

A. Yes, sir.

Q. Men that you talked it over with when you met them?

A. Yes.

Q. Now, I believe you have testified that somebody came to talk to you about these claims in Siletz, and you told him you would think it over for a few days?

A. Yes.

Q. And in a few days you went over to Mr. Jones' office, and later you entered into a contract with him?

A. Yes.

Q. Now, in that contract he agreed to advance certain money, didn't he?

A. He agreed to loan me money.

Q. Yes, to loan you money. He was to show you where the land was, too, wasn't he, and you were to pay him a location fee?

A. No, I don't think there was anything said about that.

Q. You don't think there was anything said about paying him for showing you the land?

A. I don't think so.

Q. Well, when they first came to you about this matter, they showed you the contract, didn't they, Mr. Conner?

A. What is that?

Q. I say, when they first came and talked to you about filing on a claim, they gave you a copy of the contract, didn't they, and you kept it and looked it over for two or three days, and then decided you would take it—you would sign it?

A. I don't remember about that.

Q. Well, you read the contract before you signed it, didn't you.

A. What is that?

Q. I say, you knew what was in the contract before you signed it?

A. Oh, yes, yes.

Q. What was the total amount that Jones was to let you have?

A. Why, seven hundred dollars and something.

Q. $720, wasn't it?

A. Something, yes.

Q. Now, the Government has introduced a contract here that two witnesses have testified was a contract such as you all signed, and in that contract Mr. Jones was to have $185 location fee. He was to build a house, for which he was to be paid $100. He was to clear and cultivate the land, or

so much thereof as is required, and for the time required, for which he was to receive $175. And he was to make—that is, if you wished him to do so, he was to advance the fees, the Land Office fees required at the Land Office, and the necessary expenses in going to and from the land, to an amount not exceeding $60, and then he agreed to get you an additional loan of $200, making a total of $720.

A. Yes.

Q. Now, does that refresh your memory as to the details of the contract, Mr. Conner?

A. I think that is about right.

Q. That is about right. Now, when you testify that he paid your expenses over there, and he paid the Land Office fees, and these various small items of money, he was just carrying out his part of the contract, wasn't he?

A. Yes.

Q. Doing what he had agreed to? That is true, isn't it? Do you hear me?

A. What is that question?

Q. I say, when he went ahead and paid your travelling expenses, and paid for your grub, and paid the Land Office fees, and all these little items that you testified about, Mr. Jones was just doing the things that he had agreed to do in the contract, wasn't he?

A. Yes.

Q. And after the proof was made, you gave him a mortgage and got your additional $200?

A. Yes.

Q. That was all according to contract?

A. I think he paid me $100 when I gave him the mortgage.

Q. Well, you had borrowed $100 previously?

A. Yes, he had given me some along.

Q. Yes, you had got $200 before proof was made?

A. Yes.

Q. So you only had $100 coming?

A. Yes, that is right.

Q. And he did everything that he agreed to do in that connection, didn't he?

A. Yes.

Q. And then you fulfilled your contract by giving him a note and mortgage?

A. Yes.

Q. Now, that is all there was to your contract, wasn't it? You were under no obligation to sell the land to him, were you?

A. No.

Q. And you didn't sell it to him? I say, you didn't sell the land to Mr. Jones?

A. No. He never wanted to buy it—never said anything about buying it.

Q. And you sold it to somebody else?

A. Yes.

Q. And got your money from the other fellow?

A. Yes.

Q. And paid Mr. Jones off? The man that bought the land paid Jones off, and gave you the additional money?

A. Yes.

Q. So that ultimately the fellow that got the land paid all these things, because he paid Jones? That is right, isn't it?

A. Yes.

Q. The fellow who got the land paid for building the house, and paid for travelling expenses, and the board, and all this stuff, because he gave the money back to Jones? That is true, isn't it? What did you get for the claim, Mr. Conner? How much did you sell the claim for?

A. $200.

Q. $200 more than the $720?

A. Yes.

Q. That is right?

A. I never got the $720, you understand.

Q. Well, you had gotten that before, and given your mortgage for it, and then the man that you sold to assumed the mortgage and gave you $200 more. Is that what it was?

A. He gave me the $200 for my claim.

Q. That would make $920. Is that what it cost the man who got it?

A. That is what it amounts to.

Q. How is that?

A. That is what it amounts to.

Q. $720 and $200 makes $920.

A. Yes.

Q. That is what you sold your claim for? Do you remember about how long you had had your claim before you were able to sell it for $920?

A. Why, I sold it a little while before it was patented, before I received the patent.

Q. A little while before the patent?

A. Yes.

Court: Whom did you sell that to?

A. Mr. Montague.

Court: Did Mr. Montague get the deed from you?

A. Yes.

Court: You deeded to him and not to Jones?

A. Yes, sir.

Q. That is Mr. Montague of where?

A. What is that?

Q. Where did Mr. Montague live?

A. Well, now, I don't know where he lived. Up the country somewhere.

Court: He lived in Albany, didn't he?

A. Albany, I think, yes.

Q. Now, you understood, that is, you had your own idea of the homestead law before you ever met Jones?

A. Yes.

Q. And you had an idea that you had to go back there every six months, didn't you?

A. Yes.

Q. And that idea had been with you for years before you ever saw Jones?

A. Yes.

Q. Now, when you would go over there, for instance, in October, and visit the claim, you understood, according to your idea of the homestead law, that you had to go back within six months from October, didn't you.

A. Yes.

Q. That didn't come from Jones? That is an idea that you had entertained for 25 or 30 years?

A. Yes. They told me the law had changed.

Q. How is that?

A. They told me the law had changed in regard to soldiers' homesteads.

Q. Oh, and in what respect, Mr. Conner?

A. That a man who served two years or more in the Army could prove up in a year.

Q. Yes, that is that act of 1872.

A. Yes. We had to wait longer than that before that.

Q. Yes. Well, before that time, you got credit for your service in the Army, except that you could not prove up for a year. Under the law of 1872 you had full credit for all of your time except one year.

A. Yes.

Q. In other words, if you had served six years you couldn't just file on a homestead and get a patent to it?

A. No.

Q. But you had to wait a year?

A. Yes, that is right.

Q. Now, what time did you serve in the Army?

A. How much time?

Q. Yes.

A. Three years.

Q. And just what did they tell you about the change in the law?

A. Why, they said that in place of two years, I could prove up in one year.

Q. In one year?

A. Yes. You see, under the old law I would have to wait two years before I proved up. Under the new law, they said only one year.

Q. Well, isn't this the fact, Mr. Conner? Just to refresh your memory. Didn't they tell you that on the Siletz timber only a three years' residence was required under the Act of 1894? I don't suppose you remember the date of the Act?

A. No.

Q. But isn't that what they told you, that three years' residence was required on the Siletz, as against five years' residence under the general homestead law?

A. I don't rmember what they said about it.

Q. You don't remember?

A. No, I can't remember.

Q. But you do remember they told you there had been some change?

A. Yes.

Q. Now, you say that Mr. Wells would come around and tell you that it was time to go back on the claim?

A. Yes.

Q. Didn't you know that, without being told that, Mr. Conner?

A. No.

Q. How is that?

A. I didn't know anything about it. Whenever he would come around, why, we would go.

Q. Well, you had your own ideas of the homestead law, you say, and you went there every six months according to what you thought the homestead law was? That is true, isn't it?

A. Yes.

Q. And you knew each time when you had been there the time before?

A. Why, of course; but we had to get ready, and had to figure on getting ready to go whenever the time come.

Q. That is what I thought. All he did was to say, "Now, we are all going over about a certain time."

A. Yes; three or four or five would go together.

Q. But he didn't have to tell you when your six months was up? You knew that yourself?

A. No, we went oftener than six months.

Q. You went oftener than every six months?

A. Yes, sir.

Q. About how often did you go, Mr. Conner?

A. Why, about every three months we would go.

Q. Now, the first thing you did was to go over and see the land, wasn't it?

A. Yes.

Q. That was before you filed?

A. Yes.

Q. And then what did you do about the land after the first visit over, when you looked at the land and decided which claim you would take, which particular land you would take, what next did you do?

A. We went in the first place and filed on our claims.

Q. Well, you didn't file before you saw them, did you?

A. Yes, we did.

Q. What?

A. Yes.

Q. You filed on them before you saw them? Are you sure about that?

A. Well, I am pretty sure.

Q. Now, do you remember a man named James D. Watts?

A. No.

Q. Special Agent of the General Land Office? Do you remember one of those fellows coming around about 1905 to see you about your claim?

A. I don't recollect any such occurrence.

Q. I find here in this exhibit that the Govern-

ment has produced, what purports to be a certified copy of an affidavit made by you on March 9, 1905, before James D. Watts, Special Agent of the General Land Office. Don't you remember anything about that?

A. Why, I don't exactly remember, but maybe he did come to see me. I don't know.

Q. I would like to read you two or three lines of this, and see if it won't refresh your memory, Mr. Conner.

A. All right.

Q. It says, "About the 1st of October, in company with four or five others, all of whom were old veterans, we went to Oregon City Land Office and made our filings." Do you remember anything about making the affidavit now?

A. Yes. That is right now.

Q. Now, further on you say, "I made a second trip to my claim about the next spring, as I now remember, about May, 1901."

A. Yes.

Q. "With other old soldiers. This time W. N. Jones gave me the money to defray the expenses of the trip, which was made in about the same manner as the previous trip, by stopping at headquarters camp over night, and returning to Portland the next day. The third and last trip"—I am reading this particular part to refresh your memory on that third trip—"the third and last trip was made the same fall, as I now remember, about September,

Q. Could you pick him out here in this crowd?

A. No.

Q. Can't pick him out. When was it, Mr. Conner?

A. Why, I think it was Monday.

Q. Monday of this week?

A. Yes.

Q. Whereabouts?

A. Up in the office.

Q. Up in the office?

A. Yes.

Q. They sent for you to come in?

A. What is that?

Q. They asked you to come up there, did they?

A. Yes.

Q. And what else happened?

A. He just give me my evidence and that is all there was to it.

Q. You sat down and read it over?

A. Yes.

Q. In order to refresh your memory?

A. Yes.

Q. Did he show you this affidavit that you had made in 1905?

A. No.

Q. He didn't show you that. Now, after filing on the claim, Mr. Conner, you understood that you had six months' constructive residence before you had to establish an actual residence, didn't you?

In other words, you had six months to get onto the claim in?

A. Yes.

Q. And that is the understanding you have had of the homestead law for years, isn't it?

A. Yes.

Q. That wasn't told you by Jones? It is a matter you have known to your satisfaction for a long time? Isn't that the fact?

A. What is that?

Q. I say, Jones didn't tell you that? You had known about that feature of the homestead law for years?

A. Supposed to be the homestead law, yes.

Q. You understood it to be that way?

A. Yes.

REDIRECT EXAMINATION.

Questions by Mr. Haney:

Q. Mr. Conner, you never had known Mr. Jones or Mr. Potter until after you met Mr. Wells in connection with this matter, had you?

A. No.

Q. At that time you lived in a rented place?

A. Yes.

Q. And you were conducting a one-chair barber shop?

A. Yes.

Q. You called upon Mr. Jones at his office in the Worcester building?

A. I think so, yes.

Q. And there the agreement was made as to your going upon this land?

A. Yes.

Q. You say Mr. Jones was to advance the expenses?

A. Yes.

Q. And the necessary expense for going to the land?

A. Yes, sir.

Q. And for proving up on the land?

A. Yes, sir.

Q. And was to furnish you $200 in money after you had made your final proof?

A. Yes, sir.

Q. Did you have any security to give Mr. Jones for that?

A. No.

Q. You didn't give him any, did you?

A. I gave him a mortgage on the claim.

Q. Yes, after you made your final proof you did?

A. Afterwards, yes.

Q. But before the advances you gave no security?

A. No.

Q. Now, at the time you made your final proof, did Mr. Jones accompany you to the Land Office?

A. I don't know. I don't hardly think he did.

Q. Mr. Potter did, did he not?

A. Either Potter or Wells, I don't know which.

Q. You spoke in your cross examination about having sold the land to Mr. Montague?

A. Yes.

Q. Subject to this mortgage?

A. Yes.

Q. And you said to counsel that you received $200 more than the mortgage for the land?

A. I received $200 from Mr. Montague.

Q. Yes. And you had received $200 from Jones?

A. Yes.

Q. You told counsel that the purchase price was $920. Do you know whether the mortgage was ever paid, or not?

A. What is that?

Q. Do you know personally whether the mortgage was ever paid, or not?

A. I don't know anything about it.

Q. So in your cross examination, when you stated that it was, you are not sure about that? You don't know about it?

A. I don't know. I know Montague was to pay the mortgage.

Q. All you do know is that you got $200 from Jones and you later got $200 from Montague?

A. Yes, sir.

Q. And you signed the deed, either to Montague or to somebody that Montague designated?

A. Well, I signed the deed, I think, to Montague himself.

Q. Aren't you mistaken about that, Mr. Conner? Wasn't the deed to a man named Neis?

A. I don't remember.

Q. But it was to a man designated by Montague?

A. What is that?

Q. It was a man named by Montague?

A. He might have named him. I don't remember.

Q. It would not have made any difference to you whether the deed was to Montague, or somebody Montague wanted you to deed it to? If you got the $200 you would deed it to anybody he said?

A. I understood Montague was buying the claim. That is what he told me.

RECROSS EXAMINATION.

Q. There is one thing I would like to straighten up. Mr. Conner, you have testified that you went to Oregon City and filed on the claim and then visited it?

A. Yes.

Q. Now, I would like to straighten that up, because I think you are mistaken about that. Here is an affidavit known as a non-mineral affidavit which is a part of your filing on that land, sworn to on October 3, 1900, before J. H. Lutz, the County Clerk over there in Lincoln County. Do you remember going over there and making your filing before the County Clerk?

A. Where was that?

Q. I presume it would be at Toledo.

A. Toledo?

Q. Yes. This is a document produced here by the Government and contains a certified copy of your filing papers which were executed not before the Oregon City Land Office, but before the County Clerk over in Lincoln County.

A. Some papers were executed in Toledo.

Q. Yes.

A. I don't know what they was.

Q. Then you came back and made your filing in Oregon City, didn't you?

A. I think so, yes.

Q. You brought that non-mineral affidavit back and executed a veteran's affidavit at Oregon City, an affidavit showing your war service.

A. I don't remember now.

Q. How is that?

A. I don't remember how it was.

Q. You don't remember?

A. No.

Q. But you do remember signing some papers at Toledo?

A. Yes.

Juror: Did you receive $400 for your claim, or $200? That is not clear in my mind. I understand you got $200 out of Mr. Jones and $200—

A. I got $200 from Jones and I got $200 from Montague.

Q. That is $400 that you received?

A. Yes.

Witness excused.

M. A. Fleming, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Miss Fleming, you are the court reporter for this district?

A. I am.

Q. How long have you held this position?

A. About 20 years.

Q. Did you report the testimony given in the case of United States vs. Willard N. Jones, Thad Potter and Wade?

A. I did.

Q. Did you have the notes, the original stenographic notes you took of the testimony given at that trial, extended and typewritten?

A. Part of them I did.

Q. But you read from those notes, and caused them to be written?

A. Not all of them.

Q. Would you be able to identify the notes you took of the following witnesses: Brigham, Depue, Gannon, Johnson and Teghtmeier?

A. You mean the shorthand notes?

Q. Yes.

A. I would.

Court: Were those notes extended?

Mr. Goldstein: Yes.

Court: Do you have them here?

Mr. Goldstein: Yes, your Honor.

Court: Do you object to them?

Mr. Hall: Yes, your Honor, to the admissibility, not to the correctness of the transcript.

Mr. Goldstein: If there is no question as to the correctness of this transcript, I now offer them in evidence; they being the dead entrymen.

Mr. Hall: Do you offer them all together?

Mr. Goldstein: No. I am going to read it into the record. I desire to read into the record the testimony given by Edward C. Brigham, one of the nine entrymen mentioned in the plaintiff's complaint, the said Brigham having died since giving his testimony, in the case of the United States vs. Willard N. Jones, the defendant in this case, Thad Potter and Wade; the case in which Brigham testified being a criminal action instituted by the Government charging the defendants with conspiracy to defraud the Government out of these very lands for which the Government is now suing to recover damages.

Mr. Hall: Counsel for defendant objects to the introduction of this testimony, for the reason that it is incompetent, immaterial, and hearsay.

After argument, the court sustained the objection, on the ground that the testimony is not regarding the same subject-matter between the same parties.

Mr. Haney: If your Honor please, in order that the Government's rights may be protected, I would like to make an offer to introduce by Miss Fleming what was said on the former trial.

Q. Did you hear Richard D. Depue testify, as a witness for the Government, in the case of United States vs. Willard N. Jones, Thaddeus Potter, and Wade, in the trial which was had in the United States District Court for the District of Oregon, in 1905, I believe, wherein these three defendants were charged with having conspired to defraud the United States out of land embraced within the Silezt Reservation, and subject to homestead entry under the Act of Congress of 1894, and concerning which the said Richard D. Depue testified as being one of the entrymen who filed upon the land in pursuance to the alleged conspiracy, which said witness is also said to have been an entryman upon the land which the Government now seeks to recover damages for the loss thereof by virtue of fraud and deceit practiced by the defendant in inducing Depue to file upon this land?

A. I heard the testimony in that case, and reported it.

Q. Did you hear the testimony of this particular witness, Richard D. Depue?

A. Yes, I did.

Q. Did you likewise hear the testimony of Anthony Gannon in the same particular trial, and concerning the same particular matter about which

the previous witness testified, and which witness Gannon was also one of the entrymen upon which this action is predicated?

A. I heard the witness Gannon's testimony.

Q. Did you also hear, under those circumstances, the testimony of the witness Thomas Johnson?

A. I heard Johnson's testimony.

Q. Did you also hear, under the same circumstances, the testimony of William Teghtmeier?

A. Yes, I did.

Q. Did you also hear, under the same circumstances, the testimony of Edward C. Brigham?

A. Yes, I did.

Mr. Goldstein: Now, if the court please, the Government offers to prove by this witness what these last named witnesses testified to at that trial concerning the subject-matter of this particular action.

Mr. Hall: Objected to by counsel for the defendant, as being incomeptent, immaterial, and hearsay.

Court: The objection will be sustained, and you may have your exception.

EXAMINATION BY THE COURT.

Q. Miss Fleming, did you transcribe the particular depositions that counsel are referring to at this time?

A. I looked at my notes at noon, and I judge from them that I only transcribed one of those witnesses; but I could verify the testimony.

Q. But you have the original notes of all of these witnesses, so that you are able to read your own notes of the testimony given by those witnesses?

A. Yes, I have.

Court: Very well. Do you object to that—to reading the notes?

Mr. Hall: We object to the witness reading her notes taken, in which she took the testimony of the witnesses named, or any witnesses in the other trial, for the same reason, that the same is incompetent, immaterial, and hearsay.

Court: Very well. The objection will be sustained. You may save your exception.

Government allowed an exception.

Excused.

B. S. Hunter, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Mr. Hunter, where do you live?

A. I live at Dundee, Oregon.

Q. Dundee, Oregon?

A. Yes.

Q. How long have you lived in Dundee, Oregon?

A. Well, I have lived close there for about 21 years.

Q. Have you lived there continuously for the past 21 years?

A. Yes, sir. Well, no, I was one year in California three years ago.

Q. When was that?

A. I was in California three years ago one year.

Q. Outside of that?

A. I have been there all the time.

Q. Outside of that residence in California, you have lived continuously in Dundee, Oregon?

A. Yes.

Q. Where did you live in the years 1900, 1901, and 1902?

A. I lived in Dundee.

Q. Did you have a family at that time?

A. Yes, sir.

Q. What did it consist of?

A. Well, I got two boys, but there is neither one of them at home. One of them lives in California and one of them lives at Gold Beach; and my wife with me.

Q. Your wife is living with you?

A. Yes, sir.

Q. What were you doing at the time—what was your business?

A. Well, there was a good share of the time since then I have been in the store.

Q. What store?

A. Dry goods and groceries in Dundee.

Q. Were you engaged in that business during the years 1900, 1901, and 1902?

A. No, no; I wasn't engaged in that then.

Q. What were you doing during those years?

A. Well, I was just working around one place and another.

Q. What was your general occupation during those years?

A. Well, I suppose you would call it farming.

Q. Farming?

A. Yes, sir.

Q. Did you file on any homestead land in the Siletz Reservation in Lincoln County?

A. I did.

Q. How did you happen to file?

A. Well, I got a letter from my sister that there was a lot of old soldiers going out there to file on the land.

Q. And who is your sister?

A. Mrs. Wells now. It wasn't then, though.

Q. You are at present his brother-in-law, are you? Brother-in-law of John L. Wells?

A. Yes.

Q. Who testified in this case?

A. Yes.

Q. Where were you supposed to meet the party, if you did meet them?

A. I was to meet them at Carlton.

Q. At Carlton?

A. At Carlton, yes.

Q. Did you meet them?

A. Yes, sir.

Q. Whom did you see there at Carlton?

A. Well, I seen Mr. Wells, and I seen Mr. Potter, although I didn't know Potter—had never seen him before, until I was introduced to him.

Q. Were you introduced to him at that time?

A. Sir?

Q. Were you introduced to him at that time? Were you introduced to Mr. Potter by Mr. Wells?

A. Yes, sir. Mr. Wells, I think it was, introduced me to him.

Q. You met them at the train while the train was going through Carlton?

A. I met them at the train when the train was coming to Carlton.

Q. And how many were there in the party, do you remember?

A. I think there were sixteen of us.

Q. Sixteen old soldiers?

A. Yes, sir.

Q. Are you a veteran of the Civil War?

A. Yes, sir.

Q. And who paid for your fare from Carlton to where you were going?

A. Well, I suppose Potter did. I didn't see any money paid, or anything of the kind, but I went. I guess he paid my fare.

Q. Did you pay it?

A. No, sir.

Q. Where did you go to?

A. Went to Toledo, Oregon.

Q. Oregon?

A. Yes, Toledo, Oregon.

Q. Then what did you do when you got there?

A. Sir?

Q. What did you do when you got there to Toledo?

A. Stayed there all night. Next morning we got a couple of teams to take us up to Siletz Reservation.

Q. Where did you stay all night?

A. Stayed all night at the hotel there. I don't know what the name of it was, though.

Q. At the hotel at Toledo?

A. At Toledo, yes.

Q. You say the teams came the next day?

A. Yes, sir. There were two teams went out; one four-horse team and one two-horse team taken us out there.

Q. Took you out where?

A. Taken us out to where this homestead land is. I believe they call it Canoe Landing.

Q. Canoe Landing?

A. Canoe Landing is where we stopped.

Q. That is the general headquarters cabin located there?

A. That was headquarters.

Q. Did you stay there all night?

A. Yes, sir.

Q. Then, when did you return?

A. Returned the next afternoon, next day.

Q. You returned the next afternoon?

A. Next day, yes.

Q. Who paid for your expenses from and to Canoe Landing?

A. I suppose Potter paid them, if there was any.

Q. Was your land, your claim pointed out to you?

A. Yes, sir.

Q. How far was it from Canoe Landing?

A. Well, I couldn't tell; quite a piece to mine.

Q. Did they show you where the lines were, or any stakes were there?

A. Well, I believe they did show me one stake; showed me which way my land lays.

Q. Was it timber land or agricultural land?

A. Timber land.

Q. Was it heavily timbered?

A. Some of it was.

Q. Was there any cabin or any clearing?

A. No, sir, there was nothing done on it at that time.

Q. Then, what did you do? Where did you return to?

A. Sir?

Q. Where did you return to, Dundee or Portland?

A. Dundee.

Q. Had you up to that time entered into any agreement or contract with anyone concerning what you were to do with the filing?

A. Yes, I believe I did. The other trial, now,

they tried to make me believe I had contracted with Mr. Jones, but I didn't. It was Mr. Wells brought up the contract for me, and I signed it.

Q. Mr. Wells brought a contract to you at your home?

A. He brought up a contract that was to go to Mr. Jones.

Q. Mr. Wells brought the contract to go to Mr. Jones?

A. I suppose it did. It was there at his office.

Q. Had you talked with Mr. Jones up to that time?

A. I had never seen him but one time before.

Q. You saw him one time before, you say?

A. No, I guess I had never seen Jones then. I don't think I had. I hadn't seen him more than one time anyhow.

Q. Where did you sign the contract? At your home at Dundee?

A. No, sir.

Q. Where?

A. At Grand avenue and old Stark street.

Q. Here in East Portland?

A. Over in East Portland.

Q. Whose office was it?

A. Mr. Wells'.

Q. Was that before you returned to Dundee, o after you returned to Dundee, that you went there

A. It was after we come from out there.

Q. Oh, you came direct to his office here in East Portland?

A. No. I come—I got off the train at Lafayette, and come home; and then after that I was down in Portland and signed the contract.

Q. How long after you returned to Dundee the first time?

A. I couldn't tell you. It seems to me it was quite a while.

Q. What did Mr. Wells say to you at the time you signed the contract?

A. Well, I don't know as—he didn't say much of anything to me. I read the contract, but I don't remember now just exactly how it read, and then I signed it.

Q. Did he tell you whom you were making it out with?

A. Well, it said on the contract who it was to.

Q. What?

A. It said on the contract who the contract was with.

Q. With Mr. Jones?

A. Yes.

Q. What were you to receive for signing the contract?

A. Didn't receive anything.

Q. Did you receive any money afterwards?

A. Yes.

Q. How much?

A. I received—well, when I proved up, I guess

the money was paid later. There was no money paid until after I proved up.

Q. How long after that first visit did you go down there again, if at all?

A. I don't remember just how long it was.

Q. How many months, about?

A. Well, this was in October, that we went there first; and it was either March—February or March, that I went down there again.

Q. About five or six months later?

A. About six months, I should judge.

Q. You are sure of that, are you?

A. Yes, I am sure it was that time.

Q. One was in the fall and the other the spring?

A. Yes.

Q. Were those the only two visits you made?

A. Those are the only two visits I made down there, sir.

Q. You have never made any other visit since?

A. No, sir.

Q. And how did you happen to go in the spring? Who asked you to go?

A. I got notice—I think it was from Potter—to go down the second time.

Q. And did you go direct from Dundee?

A. No.

Q. Or did you come to Portland first?

A. I came here first.

Q. Whom did you meet here?

A. Met Mr. Jones—the first time that I met him.

Q. Where did you meet Mr. Jones?

A. In his office.

Q. What was said at that time?

A. Well, I went in, and told him who I was. He wanted to know if I was going out to my claim. I told him I was.

Q. Who went down with you that second time?

A. A man by the name of Longnecker.

Q. Who is Longnecker?

A. Well, he was an old man that lived out here at Montavilla. I guess he is dead now.

Q. An old soldier?

A. Yes.

Q. Who paid your expenses the second time?

A. I suppose Jones did.

Q. Did you pay anything at all the first visit you made?

A. No.

Q. On the second visit what took place after you got down to Siletz?

A. I didn't pay no bills the second time I went there.

Q. How is that?

A. I didn't pay anything the second time I went.

Q. I understand; but what did you do when you got down there? Where did you go?

A. I stayed all night at the hotel just as I did before. And then next morning we went out to the claims and stayed there over night.

Q. Where did you stay over night?

A. I stayed—well, I stayed at headquarters.

Q. You stayed over night at the headquarters cabin?

A. Yes; I didn't stay out in my own cabin.

Q. Did you stay out on your claim at all?

A. No, I didn't stay on my claim.

Q. And how long did you stay down there?

A. I stayed that one night and went back the next morning.

Q. You stayed there one night and went back next morning?

A. Yes.

Q. Did you visit your claim at all?

A. Yes.

Q. What did you see there?

A. I seen a cabin and some fruit trees.

Q. How many?

A. Well, I didn't count them. I couldn't tell you how many there was. Probably 15 or 20—maybe more. I didn't count them.

Q. Just planted?

A. Well, they had been planted that fall before.

Q. You didn't stop over night in your cabin, did you?

A. No; it was too cool at that time.

Q. Was there any flooring in that cabin?

A. No.

Q. Was there any furniture in the cabin?

A. No.

Q. Was there any stove in the cabin?

A. No.

Q. Was there any paned windows in the cabin? Glass windows?

A. Sir?

Q. Were there any glass windows in the cabin?

A. Oh, yes, yes.

Q. And how about the door? Was it an opening or was there a door?

A. Oh, it was an opening.

Q. Just an opening?

A. Yes. There was a frame in, of course, the same as any other windows. I didn't measure how big they was.

Q. How long afterwards did you make your final proof?

A. Well, sir, I couldn't tell you how long it was.

Q. Did you make final proof?

A. Yes, sir. I know it was sooner than I was expecting it a little.

Q. So the extent of your visiting your claim was just these two times?

A. That is all.

Q. On no occasion you stayed there at all over night?

A. No.

Q. And you resided all that time where?

A. Sir?

Q. Your residence during all of this time was where?

A. Yes.

Q. Where was your residence during all of this time?

A. Dundee.

Q. And where was your wife living all this time?

A. She was right there.

Q. And all of your personal belongings, where were they?

A. Sir?

Q. All your personal belongings, where were they?

A. Yes.

Q. Where?

A. Dundee.

Q. Who paid for your fare to Oregon City to make final proof?

A. I think Potter did.

Q. Did he come down after you to Dundee or did you come to Portland?

A. No, I was notified to come.

Q. Who notified you to come?

A. Potter, I think it was.

Q. Where did you meet him?

A. I don't think I met Potter till I got to Oregon City.

Q. Whom did you come there with?

A. Mr. Wells.

Q. Who else?

A. Well, there were several of the boys on the

train with us, went up in the car. There was one by the name of Brigham.

Q. Did you know any of them before this time?

A. Yes, but I don't remember now, just who it was. There was four or five of them along in the same car that we were. I don't remember of anybody but Mr. Wells and Brigham. I know they were along.

Q. Did you have anything to do with publishing your notice of intention to make final proof?

A. No.

Q. Did you know that that was required?

A. Yes.

Q. Who spoke to you about that?

A. Well, I have always known that I had to give notice of that kind; but then I didn't make any.

Q. You didn't attend to it at all?

A. No.

Q. Who attended to it for you?

A. I don't know. Somebody did—was good enough to do it.

Q. Did you have any arrangement with anybody to attend to it for you?

A. No.

Q. Did you know it was done when you went to make final proof?

A. I didn't know it was done until I got notice to come and make final proof.

Q. Did you know who your proof witnesses were before you got to Oregon City?

A. I think one of them was Wells and I think the other one was Brigham.

Q. Well, did you know that before you got to Oregon City?

A. No, sir.

Q. Who suggested them to you as proof witnesses?

A. Nobody.

Q. Well, how did they happen?

A. I was better acquainted with them than I was with any of the rest of them, and I asked them to.

Q. How is that?

A. I was better acquainted with them than I was with any of the rest of them and I asked them if they would sign.

Q. When did you ask them that?

A. At the Land Office.

Q. Well, the notice of publication usually provides who the witnesses are to be, does it not?

A. I didn't know at that time. I didn't know it.

Q. Who paid the fee to the Land Office for filing?

A. Potter.

Q. Potter?

A. Potter, I suppose. I didn't pay any.

Q. Who paid the expenses to go and come from Oregon City to your home at Dundee?

A. I paid my own expenses from Portland to home and down here.

Q. But from Oregon City to Portland?

A. I came back here again from Oregon City, and stayed all night, and then went home the next day.

Q. Did Wells and Brigham go with you on your claim at any time?

A. Sir?

Q. Did Wells or Brigham ever visit with you on your claim?

A. Well, I couldn't say.

Q. You don't know, do you?

A. No.

Q. What was the extent of the cultivation on the land, do you remember now?

A. I don't know anything about it.

Q. Who was putting up this money all of this time?

A. Well, I don't know who put it up. I suppose. I was under the impression Jones was putting up the money.

Q. Didn't you have a talk with Wells as to that?

A. Sir?

Q. Didn't Wells tell you who was?

A. No. I don't know only just hearsay, is all I know about it.

Q. Well, I mean from Wells.

A. From Wells?

Q. Yes.

A. No, I don't know as Mr. Wells ever told me right out that Jones was putting up for it.

Q. Didn't you think it rather strange that someone was putting up all this money for you?

A. Well, yes, I thought it was a little bit strange.

Q. What were you expecting to get from him?

A. Well, I didn't know what I would get.

Q. What were the other people who were putting up the money going to get?

A. What?

Q. What were the people who were putting up the money going to get for doing this service for you?

A. There was nothing ever said to me about money, in regard to the expense, or what I was to get, or anything at all about it till after we had been out there.

Q. After you had been out where?

A. Out to Toledo.

Q. And what was said to you at that time?

A. Well, I don't remember just what might have been said. Of course I got the impression if I got the place, why, if I wanted to sell it I could sell it; if I didn't want to sell it I could keep it.

Q. And what were you going to get?

A. I didn't know nothing about it.

Q. Who made that statement to you?

A. Oh, different ones.

Q. Did you have a talk with Wells or Potter concerning this?

A. Well, I don't know as ever I heard Potter say just what—anything about that ; but I heard the rest of the boys talking about it. Now, of course, I had no chance to find out anything about it, only just what was represented to me when we went out there.

Q. What did you do with the final certificate you received from the Land Office as soon as you made final proof?

A. What did I do with the certificate?

Q. Yes.

A. Which do you mean, the patent?

Q. Before you get patent you get a certificate from the Land Office after you pay your fees and make your final proof?

A. I don't think I got any.

Q. Wasn't it mailed to you at all?

A. I don't remember of ever seeing one.

Q. Did you at any time give your residence as any place other than Dundee, Oregon?

A. No. Well, now, then, I made a mistake a while ago. I did stay pretty near a year down at Sellwood in that time that I give in that I never left that place only to go to California. I did stay pretty near a year in Sellwood.

Q. You mean Sellwood here in Portland?

A. Sellwood right here, yes. Working at the Woolen Mills. I stayed right there at Dundee all

excepting while I was here at Sellwood and in California.

Q. Did you leave any word with the postmaster at Siletz to transmit any mail to you to Dundee or at Sellwood?

A. No, sir, I never did.

Q. You don't believe you ever received a certificate for this land?

A. I never seen any?

Q. Did you get patent after a while?

A. Well, sir, I never got anything.

Q. Didn't you get the patent?

A. No, I didn't get the patent either.

Q. Who got it?

A. I suppose—oh, Montague—after the patent had come he come to me and said it had come.

Q. You sold it before that time?

A. I sold the land to Montague.

Q. Now, I will ask you, Mr. Hunter, did you intend to live on the land and make it your home, or did you intend to get this land to sell it for speculative purposes?

A. No, I don't think I expected to live on it.

Q. You don't think you intended to live on it?

A. I don't think I did, no.

Mr. Goldstein: I offer in evidence at this time the certified record of the application, final proof leading to patent issued to Benjamin S. Hunter, one of the nine entrymen mentioned in the plaintiff's complaint.

Mr. Hall: Objected to as incompetent and immaterial and for the reason it does not appear that Jones gained title to this land.

Objection overruled. Exception allowed.

Marked "Government's Exhibit 17."

Government's Exhibit No. 17, being the exemplified copy of all of the originals in the files of the Patent Office of the United States in regard to the homestead entry of Benjamin S. Hunter for the S½ of the NW¼, the SW¼ of NE¼, and the NW¼ of SW¼ of Sec. 13, Twp. 9 S., R. 10 W. of W. M., containing 160 acres, and showing that under the application, proofs, and other documents, the Government of the United States duly issued a patent to said Benjamin S. Hunter on the 26th day of September, 1902.

Q. After you entered into this contract did you at any other time enter into any other conveyance or instrument with Wells or Jones?

A. After I had proved up on it?

Q. Did you at any time enter into a mortgage?

A. That was after I made final proof.

Q. You entered into a mortgage with whom?

A. Yes, Mr. Wells, or Mr. Jones.

Q. When did you make this mortgage?

A. I didn't lift it at all. Montague lifted it.

Q. How is that?

A. Montague lifted the mortgage. I didn't lift it at all.

Q. I said when did you make the mortgage?

A. Oh, I made it the next day after I had made my final proof.

Q. You made your mortgage the day after you made final proof?

A. Yes.

Q. And in whose office?

A. Jones'.

Q. In Jones' office?

A. Yes.

Q. How much did you receive then?

A. Sir?

Q. What did you get from Jones?

A. I got $100. I gave him a mortgage for $200. I suppose the other $100 was for expenses.

Q. You only got $100 from Jones?

A. I got $100. I gave him a mortgage for 200. I suppose the other $100 was for expenses.

Q. Is that all the mortgage was for—just $200?

A. That is all the mortgage I gave.

Court: For $200 only?

A. $200, yes, sir.

Court: Wasn't it for $720?

A. No, sir.

Q. You mean, it was for $720, don't you?

A. I think it was $200.

Court: Is the mortgage here?

Mr. Goldstein: No. I think it has been recorded. It is for $720, I think.

Q. You are probably mistaken about the amount of the mortgage.

A. No, I ain't, I don't think.

Q. Did you read the mortgage?

A. I think I did. That was my understanding all the time, that it was for $200. He gave me $100 money.

Q. Did you get the other $100?

A. He gave me $100 when I gave him the mortgage, and then he included the expenses of building that house and my expense over there and all amounted to $100, and I gave him a mortgage for $200. And then the agreement was—I don't remember just how long a time I had to pay that mortgage in now, whether six months or a year or two years. I don't remember. That don't make any difference. But it was a contract that if I got the money and wanted to keep the land why I was to pay that $200, and if I didn't want it, why, Mr. Jones would give me $100 more.

Q. How much money did you get from Montague?

A. I got $200 from Montague.

Q. And how soon after you gave this mortgage to Jones did you get this money from Montague?

A. I didn't get it from him till my patent was in Oregon City.

Q. How did you happen to get in touch with Montague?

A. Why Comrade Rilea had fetched him out there to my place.

Q. He came to your place, did he?

A. Yes, fetched him out there and we talked the thing over. He told me how much he would give me. It was more than I would get from Mr. Jones, so of course I sold it to the man I could get the most money from.

Q. That was the intention, to sell the land as soon as you got the patent, wasn't it?

A. No, I don't know as it was particular. He come there before the patent come and talked to me about it, and then when the patent come he came back again.

Q. Was there talk about making the mortgage as soon as you made your final proof?

A. Yes, he understood all about the mortgage; he was to pay that off; he was to pay the $200 to Mr. Jones.

Q. So altogether how much did you get for filing on this land?

A. Well, I got $300 altogether. I got $100 from Mr. Jones and I got $200 from Montague.

Q. And that was over and above everything at all you did on it?

A. That was nothing for my expenses.

Q. And you never lived on the land?

A. Eh?

Q. And got $300?

A. I realized $300.

Q. I show you this signature and ask you if it is yours.

A. It looks a good deal like it.

Q. What is the answer, Mr. Hunter?

A. I say, it looks a good deal like my signature.

Mr. Goldstein: I offer in evidence the testimony of Benjamin S. Hunter as proof witness for claimant, homestead entry filed by Edward C. Brigham, one of the entrymen mentioned in the plaintiff's complaint.

Objected to as incompetent and irrelevant.

Objection overruled. Exception allowed.

Marked "Government's Exhibit 18."

Government's Exhibit No. 18, being identical with Government's Exhibit No. 4.

Q. Mr. Hunter, did you know where Mr. Brigham lived at the time you made this final proof?

A. Yes, he lived in East Portland.

Q. East Portland?

A. Yes.

Q. How long had you known Mr. Brigham?

A. Oh, I had known him for a good many years. I couldn't tell you how long.

Q. He is now deceased?

A. Yes. I knowed him pretty near ever since I have been in the country.

Q. Did you visit his claim?

A. Yes. His was right alongside of mine.

Q. His claim was alongside of yours?

A. Yes.

Q. When was the first time you were notified that you were to appear as a proof witness on his claim?

A. I was notified of it at Oregon City.

Q. At Oregon City?

A. Yes.

Q. When he was making final proof?

A. Yes.

Q. Did you know whether he lived on the land at any time during this entry?

A. No, I don't know as he did. But then he went out there with us when we went the first time, and then he was out once afterwards that I had heard about. Of course I wasn't with him the last time he went out. I don't know how it happened I didn't get to get with the rest of them; but it seems they didn't notify me, and there was only one went when I went the last time.

Q. Was he also stopping at the headquarters cabin the night you stopped there?

A. Well, the first time we went out we all stopped there together.

Q. How about the second visit?

A. There was nobody but Longnecker with me the second visit.

Q. Wasn't Brigham with you?

A. No.

Q. And that was the only visit you ever made after the first visit when you went there before there was any habitation or any building on there?

A. I was only there twice.

Q. You didn't see any buildings on Brigham's land?

A. No, I didn't see Brigham there the second time I went.

Q. You didn't see any house on Brigham's land?

A. No, I didn't notice any.

Q. You didn't see any clearing or cultivation on the land?

A. No, not on his place, I didn't.

Q. You didn't know whether he was living on the land, did you?

A. He wasn't living on the land; I knew that.

Q. You knew he didn't live on the land?

A. Yes. He made just about the same length of visits I did.

Q. Were you proof witness for any other claimants, do you know?

A. Sir?

Q. Were you witness for any other entrymen?

A. Not that I know of. I don't remember of it now.

Q. Do you know Anthony Gannon, an old soldier?

A. Well, I wasn't very much acquainted with him. Still, I had seen him a good many times there in East Portland; but I wasn't acquainted with him very much until we went out there together.

Q. Did you know where he lived?

A. Yes, I knowed where he lived.

Q. And where was that?

A. He lived on Water street and Stark; I suppose it was Stark.

Q. East Portland?

A. East Portland, yes.

Q. Do you know whether he lived there continuously during the time these things were going on?

A. Oh, I don't know anything about it. You see, I left town—when I knowed these fellows I lived in East Portland too; but I left town in 1884, so of course I lost track of most of them.

CROSS EXAMINATION.

Questions by Mr. Bowerman:

Q. What regiment were you a member of in the Civil War, Mr. Hunter?

A. I was a member of the 21st Illinois, and the 75th Illinois, both.

Q. How long did you serve?

A. Three years, very near, not quite; not quite three years.

Q. Were you living in Illinois at the time you enlisted?

A. Yes, sir.

Q. After the Civil War, where did you live?

A. I went back to Illinois and stayed a couple of years till I was twenty-one, and then I came out to Iowa, and lived there till—I lived there about five years, six years; lived in Iowa six years. Then I came out here—came out here in 1877.

Q. What part of Iowa did you live in?

A. I lived forty miles west of Des Moines in Guthrie County.

Q. How soon after the Civil War did you join the G. A. R.?

A. Oh, I didn't join for a long time. I didn't join until after I came out here. The first Post I joined was across the river. Sumner Post, that was the first Post I joined. That must have been along about 1890.

Q. While you lived in Iowa, and after you came to Oregon, you were in touch with your old comrades, weren't you?

A. Oh, yes, I would see them once in a while.

Q. Now, before you ever saw Mr. Jones, did you have some idea as to rights of a soldier to a homestead?

A. Why, yes.

Q. What were they?

A. Well, I just read in my evidence I got a letter from my sister.

Q. How is that?

A. I got a letter that all the old soldiers were going down to take a homestead.

Q. No, I say, before any of this happened?

A. Yes, I knew that I had a right to a homestead, yes.

Q. What did you understand you had to do in order to get a homestead?

A. Well, before that the law was that a man had to go on it and live five years; but then the law was changed so that an old soldier didn't have

to live so long; his time that he was in the service would go on his homestead, as I understood it.

Q. How often, did you understand, a soldier had to go to his claim?

A. Well, I don't know about that.

Q. How is that?

A. I don't know.

Q. Did you have no understanding as to that? I say, did you have no information from your old comrades as to how often a soldier had to go to the claim?

A. No, no. No, I didn't have any information from them.

Q. Now, when you gave your testimony in Oregon City, did you tell the officers there just how much you had been on your claim?

A. Sir?

Q. When you gave your proof testimony in Oregon City, did you tell the officers there just how much you had been on your claim, or how little you had been on it?

A. No, I didn't tell them anything about it.

Q. What did they ask you about that?

A. Well, I cannot recollect them asking me much of anything.

Q. Did they ask you how much military service you had had?

A. I don't think so.

Q. Did you introduce your discharge in order to show how much service you had had in the Army

A. Well, if I was I don't remember it. I might have been, but I don't remember just now.

Q. Here is a paper that the Government has introduced, Mr. Hunter, that is signed by you. It is a copy of a paper. It is called a Soldiers' and Sailors' Homestead Act of June 8, 1872. It seems to point out when you enlisted, and when you were discharged. It is pretty hard to make out the dates in there, but if you look carefully you will see them. Your name is at the bottom of it.

A. I cannot see that good enough so I can read it.

Q. Could you do better if you were down here by the light, Mr. Hunter?

A. Oh, I don't know as I could.

Mr. Bowerman: Have you got the originals here? This one you have in here is so indistinct that you cannot read the date.

Q. Here is the original of that, Mr. Hunter.

A. It don't say nothing about it here.

Q. You cannot read it, that is the trouble, it is indistinct.

A. It says there I served ninety days, but I served more than that.

Q. That is the affidavit you made, isn't it, Mr. Hunter?

A. It seems to me as though they must have made a terrible mistake here. They have got me down as serving three months, ninety days, and I enlisted in January, 1864, and was discharged 1865 —I wasn't discharged until 1866. The time don't

tally just right there. That was over a year. The way they got it here (examines paper). I don't know anything about that, sir.

Q. Is that your signature on the bottom of it, Mr. Hunter?

A. I don't know anything about any such writing as this. Well, it looks some like mine, and it looks some as though it might not be.

Q. Do you think that might not be your signature?

A. It might not be, but it is a pretty good copy of it, but I never—that was never explained to me, or I never dictated that, or anything of the kind, because in that they have only got me three months' service, and still I was in the service for over a year.

EXAMINATION BY THE COURT.

Q. How many discharges did you get?

A. I only got one. I was transferred from the 75th Illinois to the 21st Illinois.

Q. You served about three years?

A. No, not three years. I was in the 21st Illinois from June, 1865, until February, 1866—I was in that regiment. And then there is another time in the 75th Illinois that is not mentioned there at all.

Q. Well, this shows, Mr. Hunter, that you served in the 21st Illinois from the 4th of January, 18

A. No, I didn't do it.

Q. To the 16th of December, 1865. It is almost two years according to this.

A. It says there in one place ninety days.

Q. Well, I don't see that.

Mr. Haney: Yes, he served for ninety days.

Mr. Bowerman: That is a printed part of the affidavit, for the reason that the law didn't allow any soldier to homestead that had not served at least ninety days; but you show in here that you served practically two years under one enlistment.

EXAMINATION BY MR. BOWERMAN RESUMED.

A. Well, I was not in the 21st Illinois only about six months, or a little over. I don't know anything about that. That was never explained to me, or anything at all about it. How they got my name there, I don't know anything at all about it. It is a pretty good copy of my handwriting, though. It is clear enough so they could copy it.

Q. But you don't remember that you ever signed it?

A. No, sir. I don't remember that I ever signed any such paper.

Q. Now, when this matter was first called to your attention, Mr. Hunter—

A. Sir?

Q. When this homestead, Siletz homestead situation was first called to your attention, it was by Mr. Wells, I believe?

A. Oh, it was a month or two before we went

out there, in October, the first that I got any information about it at all.

Q. Yes. Who first told you about it?

A. I got a letter from my sister.

Q. Yes. Then how did you next hear about it?

A. I didn't hear anything more about it till I met the crowd going down there at Carlton.

Q. When did Mr. Wells first talk to you about it?

A. That was the time. I didn't see Mr. Wells till I met him on the train going down there.

Q. How did you know that they were going on that train?

A. I got a letter from my sister that they was going.

Q. Now, when was the contract with Jones first talked about?

A. Well, that was after we come from out there.

Q. When you came back?

A. Yes, after we came back.

Q. Whereabouts was the contract mentioned to you?

A. In Wells' office.

Q. How long after you came back?

A. I couldn't tell you just how long.

Q. Was it after you had filed or before?

A. No, it was before I filed.

Q. Before you filed?

A. Yes.

Q. Do you remember whether the contract was in writing or not?

A. Yes, it was in writing.

Q. A written contract?

A. Yes, I think it was. Well, it might have been typewritten, I don't remember.

Q. Well, I mean a typewritten contract.

A. Either typewritten—I think it was.

Q. Do you remember the provisions in that contract?

A. No, I don't.

Q. A contract was introduced when Mr. Wells was on the stand, that he testified was like the contract signed by all of you gentleman?

A. Yes, I had been over it.

Q. And we have a copy of it here.

A. Yes.

Q. In that contract Mr. Jones agreed to locate you on the land, show you what land was open to entry?

A. I had already been showed when I signed it.

Q. When you went out there you had been shown it?

Q. He agreed to build a house?

A. Yes.

Q. Agreed to do the necessary cultivation?

A. Yes.

Q. And furnish the funds necessary for travelling expenses and Land Office fees?

A. Well, I don't think there was anything said

in my contract about that. There might have been, but I don't remember it.

Q. That is, furnish these expenses up to $60.

A. I don't know how much he did spend.

Q. Then he agreed, after you had made compliance with the law, and gotten your certificate, to get you a loan of $720.

A. No, sir. There was no $720 mentioned to me.

Q. How much was it?

A. He gave me $100, and taken a mortgage for $200, and I suppose that the $100 was our expense backwards and forth, and building the house, and doing the work. I suppose that was $100. The mortgage that I give him was for $200.

Q. When you sold the place, how much did you sell it for?

A. I sold it for $200 more.

Q. Making a total of how much?

A. Well, counting $100 that he charged for going over there would make it $400.

Q. $400?

A. Yes, but I only received $300.

Q. You received the benefit of the other $100 in money spent by him, you think?

A. Yes, in travelling back and forth from her over there.

Q. The way you have it figured out, you got $10 from Jones, and $200 from Montague?

A. That is it exactly.

Q. And the other $100 was spent on expenses?

A. Yes, sir.

Q. And you calculate that you sold your claim for $400 to Montague?

A. Well, yes, you might count it that. Still, I didn't get only $300 benefit out of it.

Q. Well, if you had paid your expenses—

A. He paid my expenses, why, of course, he had ought to have something for that.

Q. Now, this man—who did you say it was that negotiated the purchase of this claim for Montague?

A. Comrade Rilea fetched me there.

Q. Is he here today?

A. Yes, he is here today.

Q. Which one is he?

A. That one-armed man down there.

Q. Whereabouts is Mr. Rilea?

A. The one sitting on the second seat, this end.

Q. And he came to see you about buying the claim for Montague?

A. He fetched Montague out there.

Q. Brought him out?

A. Yes.

Q. What did Montague say?

A. He just went through the regular rigmarole of conversation in regard to buying a piece of land, the same as you or anybody else would. But of course I couldn't sell it—he couldn't buy it until I got a patent for it.

Q. You negotiated with him for the sale of the

land just like you would for the sale of anything else belonging to you?

A. Yes, that is, when I got the land.

Q. Yes, I understand, when you got the patent.

A. Yes, when I got the patent.

Q. You felt at liberty to sell it to anybody that would give you the most money for it?

A. Yes, as long as Jones got his money that was all satisfactory. Jones taken my money and give me the mortgage, so I sold it to Montague.

Q. You were not under any obligation to sell it to Jones? You could sell it to anybody?

A. Yes.

Q. That was your understanding?

A. I wasn't under any obligation to sell it to him.

Q. So you sold it to a man that gave you more money?

A. Yes.

Q. Now, this contract, Mr. Hunter, did you see that—did you have it for a day or two before you signed it, or did you just sign it up?

A. I just signed it up off-hand. I don't remember, really, whether I read all of it or not.

Q. Now, the contract that Mr. Wells produced here, in that contract there was nothing said about Jones putting any furniture in the house? He was merely to build a house? Is that your understanding?

A. Well, I don't know as there was going to be any furniture put in at all.

Q. No, he agreed to build you a house?

A. Yes.

Q. That is all he agreed to do in that particular?

A. As far as I know.

Q. I think in your direct examination, Mr. Hunter, you said you never saw Jones but once?

A. That is all I remember of ever seeing him.

Q. That was the time when you signed the contract?

A. That was the second time I went down there, yes. I don't remember of ever seeing him before nor since till I have seen him in court here, 13 year ago. I have never seen him after that at all that I remember of.

Q. You were never in his office but the one time?

A. I was in his office one time. Yes, I was twice. I was down there—I was in there when I went down the second time, and then when I made the final proof I went in and seen him. I seen him twice after that. And then next time I seen him was in court here.

Q. You saw him when you signed the contract, and you saw him when you gave the mortgage, and got the $100?

A. Yes.

Q. Those two times?

A. Yes.

Q. That is the only times you have any recollection?

A. That is the only times I have any recollection of ever seeing the man.

REDIRECT EXAMINATION.

Questions by Mr. Haney:

Q. Mr. Hunter, you said on your direct examination that you had heard some of your old soldier friends talk about the right of a soldier to take Government land, homestead it. Who first told you that the law had been changed so that a soldier would not have to live on the land as long as other people would have to live on it?

A. Well, that has been the law for a long time, that a soldier, his time he served in the Army would go on the time on the land.

Q. Then you had heard that even before you came to Oregon, had you?

A. No, I don't know as I had ever heard anything about it before I come out here.

Q. You don't recollect who it was that first told you about that?

A. No, I don't know.

Q. Was it about the time that you took this land up that you first heard it?

A. Oh, no, I had heard that a long time before

Q. But you hadn't taken up any land as an old soldier?

A. No, I hadn't taken up any.

Q. Or tried to before that time?

A. No, I had never taken up any land.

Q. In reference to this final proof that you made in Oregon City did you have any lawyer there acting for you?

A. No, sir.

Q. Anybody help you fill out your statement?

A. No, sir.

Q. Anybody ask you about the statement so they could have it typewritten?

A. Nobody asked me anything at all about it.

Q. Did you know Mr. Potter then?

A. No.

Q. Was he there, do you recall?

A. I don't know whether he was or not.

Q. If he was you don't remember talking to him about your final proof?

A. No. No, I didn't talk to anybody, I don't think.

Q. And your recollection is that you didn't get a certificate at that time?

A. No, I didn't get any certificate.

Q. Was one later mailed to you?

A. No, sir, I never seen any.

Q. Did you get any final receipt that you recall?

A. No.

Q. And was a final receipt later mailed to you?

A. No. No, I never received anything.

Q. But shortly after that time you went to Mr. Jones' office?

A. Yes, I went the next day after I was up to Oregon City.

Q. And that is when you made your mortgage?

A. Yes.

Q. Was there anything said to you at that time by Mr. Jones as to what you were going to do with your land?

A. Not that I know of.

Q. He didn't ask you whether you were figuring on farming it?

A. I don't think he asked me anything at all about it.

Q. Now, going back to the time you first went to Mr. Jones' office when you signed the contract.

A. Well, I didn't sign the contract in his office.

Q. Well, where did you sign it—in Mr. Wells' office?

A. Mr. Wells' office.

Q. Did you talk to Mr. Wells or Mr. Jones about that contract?

A. I didn't talk to Mr. Jones any, and I don't remember of me and Mr. Wells talking anything about it. I think he just showed me the contract, throwed it down, and I think I read part of it and signed it. I don't think I read it all.

Q. Did you know the contract provided for building a house?

A. Yes.

Q. Any discussion with you about what kind of house was going to be built for you?

A. No, I don't think he said anything at all about that.

Q. Did you tell him that you wanted a floor in the house, that it was to be your home?

A. No. There was nothing said about it at all.

Q. Did he tell you that you would have to live there, or were going to live there?

A. No; never told anybody I was going to live there.

Q. You never told anybody else you were going to live there either, did you?

A. No, no.

Q. You never did intend to live there either, did you?

A. I don't think I did.

Excused.

Mrs. William Teghtmeier, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Your husband, William Teghtmeier, is dead?

A. Yes, seven years.

Q. He died seven years ago?

A. Yes, he died in 1913, the 20th of August.

Q. Where were you living at the time of his death, Mrs. Teghtmeier?

A. His death—on East Davis street.

Q. Here in the City of Portland?

A. In the City of Portland; East Portland.

Q. And how long did you and he live there?

A. Well, he hadn't lived there but a few months before he died.

Q. Well, before that, before moving to East Davis street?

A. Before we lived on Washington street, Ninth and Washington; then we lived several places out towards the Waverley line.

Q. How long did you live on Washington and Ninth streets?

A. Well, that is—oh, let's see—it would be about 10 years, I guess.

Q. About 10 years?

A. Yes, sir.

Q. That is up to 1912?

A. No. We lived there—we was gone from there about four years.

Q. Where were you gone during those four years?

A. Well, then in that time we moved around a good deal. We was out to Lincoln street, 31st, and several places.

Q. But all in the City of Portland?

A. Yes, always in the City of Portland.

Q. How long did your husband and you live together in the City of Portland prior to his death?

A. Well, since we lived here, 43 years now, and he is dead 7 years. You can count it back.

Q. Did you and he since your marriage live at any other place?

A. No, only back East in Ohio, and we come out here 43 years ago, and we have lived here in East Portland ever since. Well, the first few months we lived on the West Side, but ever since we lived on the East Side.

Q. Did your husband file upon some land in the Siletz Reservation, do you know?

A. No, he did not.

Q. I think you misunderstand me. Was he an old soldier?

A. Yes, he was a soldier, but he never filed on this land.

Q. Well, I mean, did he ever want to take out homestead entry there, and make a visit down on the Siletz once or twice?

A. Well, I don't remember whether he made a visit there, but I know he never stayed there any time, or filed on it that I know of.

Q. You know he never stayed there at any time?

A. No, sir. He was in Oregon City, as far as that, and I don't know whether he was any farther or not. But I know that he never stayed there any time.

Q. Did you ever go down there to live with him?

A. No, sir.

Q. How long was he absent at any time that he visited the place?

A. Well, I don't know how long, but it don't

seem to me he was gone any time, not to be there any time.

Q. Do you know Wells?

A. Yes, sir.

Q. Did he ever visit your house?

A. Yes, sir.

Q. Did he talk over land matters to your husband in your presence?

A. Yes; but what they talked I don't know exactly; but it was talked over.

Q. Do you remember your husband signing a paper, a contract?

A. No, I don't think—I know there is a paper that he was to sign, and whether he signed it or not I don't know, but I didn't sign it. I wouldn't sign it. I should have signed it too, but I didn't.

Q. Do you know how much your husband was to receive for signing that paper?

A. Well, no. I don't know that he signed it. He was to, and I didn't want him to, and I didn't sign myself. Of course, I thought it was something crooked about it. I didn't think it was right. It said something about a mortgage on it, and I didn't sign it; and I don't remember that he signed it.

Mr. Hall: This witness is not testifying from her personal knowledge evidently. I object to it as incompetent.

Q. Well, did Wells ever bring out a paper, a mortgage or contract, for your husband to sign? That is what we have reference to?

A. Yes; yes, he did.

Q. What did he bring out, a contract or a mortgage, do you remember?

A. No, sir, I don't remember. But I just thought it was something wasn't right about it, and I wouldn't sign it; and of course afterwards all the rest of the soldiers got—well, some three or four hundred dollars out of it. Of course because I didn't sign it we didn't get nothing out of it.

Q. Your husband got nothing out of it?

A. No, sir. I think he got $100, but that it seems to me was two years before. Didn't the soldiers get some money then?

Q. Well, do you know whether he got any money for signing this paper for Wells if he signed it?

A. No, I don't think he did.

Q. Do you know whether he ever intended to make a home at Siletz, take up a homestead to live there with you?

A. Yes, but he didn't take it up, because we had no children, and no one, and I wasn't prepared to have him go, so he didn't want to go, so he never.

Q. What business was he in at that time when these things happened?

A. Oh, you mean about being well?

Q. No, what was he doing?

A. Oh, he wasn't doing anything.

Q. Was he able to farm or do heavy work?

A. Oh, yes, but he didn't do any work—he done very little work in the last 25 years. He used to

be a cooper by trade, but he hadn't worked at his trade, nor didn't do nothing else.

Mr. Goldstein: Will it be admitted that her husband was the one that filed upon the land, and one of the nine entrymen mentioned? I am sending for the papers to have her identify the signature. If it is admitted it will save that time.

It is admitted that Mr. William Teghtmeier is the same one mentioned in the plaintiff's complaint as having filed on one of these homestead claims.

CROSS EXAMINATION.

Questions by Mr. Hall:

Q. Now, Mrs. Teghtmeier, when was it that Mr. Teghtmeier went over to the Siletz?

A. When was what?

Q. What year was it?

A. What year? Well, this that happened, you know, in 1905.

Q. 1905, are you sure of that?

A. Yes, pretty sure.

Q. Well, is that the time?

A. I remember pretty sure, because there was a nephew of mine out here from the East, and he was here again, and he spoke of this.

Q. Was it 1905 you mean, when he first went over to the Siletz?

A. I think so.

Q. And how many times did he go over there?

A. Well, he didn't—he never was over there

at all that I know of, but he went as far as Oregon City, and I am not sure—he may have went there, but if he did it was only once. He was only there, the only time I know, he never was there afterwards if he was there then, but he come right back, and so I don't know.

Q. Do you know about him going to Oregon City to prove up on his claim?

A. Yes, it seems like it was made out—

Q. I say, do you know it?

A. Like if he been there, you know, and took up the land and all, and told all how it was, you know, where it was situated and all. But he didn't never do it. That I am sure of.

Q. You were not very strong yourself at that time, were you?

A. No, sir.

Q. You were not well?

A. No, sir.

Q. Do you remember of his getting a doctor's certificate to the effect that you were not strong enough and able to go over on the place and live there?

A. No. There never was very much—I don't know—said about it. I think it was.

Q. You remember about that?

A. Oh, I remember something about, yes. Of course my memory is pretty bad.

Q. That he got a doctor's certificate that your

health was such that you could not go out there and live in the woods on this claim?

A. Well, yes. I don't know. I think—well, he wouldn't take it up because I didn't want to sign the paper, you know, that it spoke of, a mortgage.

Q. Well, as a matter of fact, you were not well enough and strong enough to go out and live on a frontier claim, were you?

A. No, sir. I would never went out because we had property here.

Q. If he got a doctor's certificate to that effect, it was true, wasn't it?

A. What, sir?

Q. If he got a doctor's certificate to that effect, that was true, that you were not well enough and strong enough to go out?

A. No, I don't know if there was much said about it.

Q. Now, at the time when you said that you wouldn't sign the paper, wasn't that the time that a mortgage was brought to you to sign, and you said you wouldn't sign the mortgage?

A. No—well, it was something on the paper about a mortgage, you know. Of course I don't know what it all read, but I wouldn't sign it because I thought there was something crooked about.

Q. You didn't want to sign it.

A. No, I didn't want to sign because I didn't think it was just right, and I didn't want to get myself in any trouble.

Q. Well, what did you know about it that wasn't right?

A. I don't know. I couldn't—of course I am forgetful, but then I know that must have been. I don't know what year that was either. I don't remember what year that was.

Q. Well, isn't it a fact that you told your husband at that time, when they wanted you to sign the mortgage, that you didn't want to sign a note and the mortgage?

A. Yes.

Q. For fear you might have to pay it—wasn't that the reason?

A. Yes. Well, I didn't want to sign anything what I thought would make any trouble, you know. But I was speaking to you it was in 1905. I don't know—I guess it was in 1902, maybe. I can't say what year it was sure now, come to think of it.

Q. Now, isn't this the fact, Mrs. Teghtmeier, that you said you wouldn't sign any mortgage or any note with Mr. Teghtmeier, but you did finally agree to and did sign a quitclaim deed?

A. No, I did not.

Q. You are sure of that? Didn't you sign a quitclaim deed?

A. No, sir.

Q. Upon some money being paid to Mr. Teghtmeier for it?

A. No, I don't think so. No, sir, I never signed no deed nor nothing.

Q. Did you know Richard Williams, Dick Williams, the attorney?

A. Dick Williams?

Q. Yes.

A. Yes, I knew him well.

Q. Do you remember of going over to his office and signing a quitclaim deed to this property along with Mr. Teghtmeier?

A. Was that—did that have something to do with this?

Q. Yes.

A. Oh, well, wasn't it about land that we had?

Q. No. No, it was about this land over there at Siletz. You said you wouldn't sign any mortgage, and you wouldn't sign any note, but you would sign a quitclaim deed; you didn't want anything more to do with it; and you did that in Dick Williams' office?

A. Well, I don't remember of it. I know I was there different times, at Dick Williams office, and I know we had a piece of land that we sold, but I don't remember. Maybe I didn't read it and didn't know. But this here paper that I spoke of, that was something about this land, you know, taking up land, and there was a mortgage and lien on some way, and I didn't want to sign that. But if I signed that over at Williams', I don't remember anything about it, if I ever signed a quitclaim deed.

Q. Isn't it a fact—to refresh your memory—that it was agreed that if Mr. Teghtmeier could get $200

for all his interest in the claim that you and he would sign a quitclaim deed and have nothing more to do with it?

A. No, sir, we didn't get it, and I didn't sign it that I know of to my knowledge. I would say so if I thought. No, sir.

Q. You don't remember Mr. Teghtmeier selling his claim and you giving a quitclaim deed for it for $200?

A. No, sir.

Q. In Dick Williams' office?

A. Because we never got the money, and if I signed it and knew it I knew something about him getting the money. Of course he might have got it and never let me know. But I don't think so, because I don't think I ever signed a quitclaim deed. No, sir, I didn't.

REDIRECT EXAMINATION.

Q. Would you know your husband's signature if you saw it?

A. Yes, I think so.

Q. Can you see?

A. William Teghtmeier. Yes.

Q. Is that your husband's signature to that paper?

A. I think so, yes, sir. Yes, sir. I think that is.

Q. Is that your husband's signature to this paper?

A. Yes. Yes, that looks just alike, and I think

it is his signature.

Mr. Goldstein: I offer that in evidence.

A. Well, is my name to it? You haven't found my name there signing it?

Q. No.

A. No, I never signed anything. I haven't signed it.

Mr. Goldstein: I offer in evidence what purports to be a contract for this land signed by Teghtmeier, and the testimony of Teghtmeier as proof witness to the claim of John Wells.

Mr. Hall: No objection to the offer of the copy of the contract. We object to the other exhibit as incompetent and immaterial.

Objection overruled. Exception allowed.

Contract marked "Government's Exhibit 19,"

Government's Exhibit 19 not dated, but signed by William Teghtmeier, is in substance the same as Government's Exhibit 1.

And testimony "Government's Exhibit 20."

Government's Exhibit 20, being the testimony of William Teghtmeier to the homestead proof of John L. Wells, for Homestead Entry No. 13090, on Government Form 4-369, and subscribed and sworn to by William Teghtmeier before Chas. B. Moores, Register of the Land Office at Oregon City, Oregon, on May 26, 1902. On the reverse side of which exhibit is the testimony of George West on behalf of the same claimant, and subscribed and sworn to before the same officer on the same date.

Q. Do you know whether your husband knew Mr. Wells?

A. Oh, yes. He knew him well.

Q. Do you know whether Mr. Wells lived down there in Siletz or in Portland? Do you know where Mr. Wells had his home?

A. No. Mr. Wells, I think he was there at our house—I don't know. I think he went with him to Oregon City, but whether Mr. Teghtmeier went clear there, I don't know. But I know he never was there but once if he was there.

Q. I mean, do you know where Mr. Wells was living at the time?

A. Oh, yes; he was living, I think, the same place he is living now. It is 15th and Ankeny.

Q. In the City of Portland?

A. East Portland, yes, sir.

Q. Do you know whether your husband knew—

A. When my husband moved?

Q. Whether your husband knew a man by the name of Rilea—Comrade Rilea here?

A. No, sir.

Q. Do you know whether he knew a man by the name of West?

A. Yes. I kind of remember him, yes.

Q. Do you know where West was living at that time?

A. No, sir, I don't. But I remember since you speak of it the name. You see, I never thought anything more about it ever since, and of course it

slipped my mind altogether most; but I remember of a man named West that was in there.

Q. Can you look at these and say whether or not these are the signatures of your husband?

A. That ain't. That is not his.

Q. That is not his signature?

A. I don't think so. That ain't signed like the other name. Is this the same?

Q. It looks the same.

A. Is there an "h" in that after "t"? No sir, there is no "h" in that Teghtmeier, you know. "Teightmeier,"—is there an "h" in there? I don't say it is his. I don't know. It is kind of—it looks like his writing.

Q. You wouldn't say whether those were his signatures or not?

A. No, sir, I wouldn't be sure. No, sir.

Excused.

Mrs. Mary L. Gillis, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Your name is what, please?

A. Mary L. Gillis.

Q. Your husband, Joseph Gillis, is dead?

A. Yes.

Q. How long has he been dead?

A. He died two years ago the 29th of last July.

Q. About two years ago?

A. Two years last July.

Q. Where were you living at the time of his death?

A. 1291 East 13th street North.

Q. City of Portland?

A. Yes, sir.

Q. How long did you and he live there?

A. I think we have been there about 15 years now.

Q. About 15 years?

A. Yes.

Q. And prior to that time, where were you living?

A. We lived on Eighth street, near Belmont.

Q. In the City of Portland also?

A. Yes, sir.

Q. How long had you and he been living continuously in the City of Portland up to the time of his death?

A. About 23 years.

Q. About 23 years?

A. Yes, sir.

Q. Had you lived at any other place?

A. No.

Q. During that time?

A. Yes, we lived two years at Gaston, Oregon.

Q. Gaston, Oregon?

A. Yes.

Q. When was that—what year?

A. Well, I think it must have been 1902 or 1903 —somewheres along there.

Q. Any other place?

A. No, sir.

Q. What did your family consist of during the years 1901 and 1902?

A. My family?

Q. Yes. Any children?

A. We had one son.

Q. Living with you?

A. Yes, sir.

Q. And where were you living during those years, here in the City of Portland?

A. Well, part of the time; part of the time in Gaston.

Q. Did your husband, Joseph Gillis, file on a quarter section of land in the Siletz Reservation as a homestead entry?

A. I think he did, yes.

Q. Do you remember how long he was absent from home on any occasion to go down to Siletz?

A. Well, it seems to me that he was gone about two nights and three days.

Q. Two nights and three days?

A. I think so.

Q. And how many different times?

A. I believe three different times, as near as I can remember.

Q. Three different times?

A. Yes.

Q. And how long between each time?

A. Well, I couldn't say. I think five or six months.

Q. Five or six months?

A. I think so.

Q. Did you ever go down to Siletz to live?

A. No, sir.

Q. Did you ever intend to go down there to live?

A. No.

Q. Did he ever ask you to go down there to live?

A. No, sir.

Q. Do you know how he happened to go down to Siletz in the first place?

A. Why, I think it was through Mr. Wells and Mr. Jones.

Q. Through Mr. Wells?

A. Yes.

Q. Did Mr. Wells visit your home?

A. Not that I remember of.

Q. How do you know, then, that it was through Mr. Wells?

A. Well, by what I heard Mr. Gillis say.

Q. Oh, Mr. Gillis told you?

A. Yes.

Q. Do you know whether he signed any contracts or mortgages?

A. Why, I think he did.

Q. What did he sign, do you know?

A. No, I don't know. I couldn't say.

Q. Do you know how much money he got for filing on that land?

A. Yes.

Q. How much?

A. $400.

Q. $400?

A. Yes.

Q. Do you know from whom he got it?

A. He got $200 from Mr. Jones and $200 from Mr. Montague.

Q. Did he ever intend to make that his home down there, do you know?

A. No, sir, I don't think he did.

Objected to.

Mr. Goldstein: I asked her if she knew.

Mr. Hall: That is not proof within the witness' knowledge.

Court: If she can testify to that from her own knowledge, it is pertinent.

Q. Do you know whether he ever intended to make that place his home to the exclusion of any other place?

A. No, I don't think he ever did. I know, in fact, he never did. He said he wouldn't take no woman into such a place as that was.

Mr. Hall: I didn't hear that.

A. He said he wouldn't take any woman into such a place as that was and make it his home.

Q. Did you know the entryman Anthony Gannon?

A. No, sir, I never knew him by sight, to know him.

Q. Did you know Edward C. Brigham?

A. Yes, I have seen him.

Q. Where was he living at the time of this occurrence in 1900, 1901 and 1902?

A. He was living in East Portland.

Q. East Portland?

A. Yes, sir.

Q. Regularly and continuously?

A. I think so.

Q. Do you know where Thomas Johnson was living? Do you know him?

A. I did not; never heard of him.

Q. Richard D. Depue?

A. I have heard of him, but I don't know him.

Q. Did you know where he was living?

A. No, I don't.

CROSS EXAMINATION.

Questions by Mr. Hall?

Q. Do you recall signing a mortgage along with Mr. Gillis to Mr. Jones?

A. I do not.

Q. You don't remember that?

A. No.

Q. To refresh your memory, didn't you sign a mortgage about the time that Mr. Jones paid the $200?

A. Well, I couldn't say sure, but I think that I did sign something at that time.

Q. You say you think you did at that time?

A. I think I did at that time.

Q. And then how long after the $200 was paid by Mr. Jones and you signed the mortgage, if you did sign one, before Mr. Gillis sold to Mr. Montague?

A. Well, really, I don't know. I couldn't say just how long, I am sure.

Q. Do you know whether or not it was after Mr. Gillis had gotten his patent to the land?

A. Yes, it was after he got the patent.

Q. He had his patent?

A. Yes.

Q. Before he sold it to Mr. Montague?

A. Yes.

Q. Then he sold it to Mr. Montague, and Mr. Montague paid him $200 over and above the mortgage, or what there was against it?

A. I suppose so.

Q. And you and he then signed a deed to Mr. Montague?

A. Yes.

Q. That is your recollection of it, is it?

A. Yes.

Excused.

Mrs. Durkee, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Mrs. Durkee, where do you live?

A. I live out on 54th street Southeast.

Q. City of Potland?

A. Yes.

Q. How long have you lived here in the City of Portland, Mrs. Durkee?

A. Since 1880.

Q. Are you the widow of a veteran of the Civil War?

A. I am.

Q. Were you approached by anyone with reference to making a homestead application for some land by reason of your being a soldier's widow?

Mr. Bowerman: Objected to as incompetent, irrelevant and immaterial, going back into ancient history.

Objection overruled. Exception allowed.

Q. Do you know Mr. Potter, Thad Potter?

A. I do not.

Q. Do you remember who called on you with reference to making an application for some land?

A. I do not remember.

Q. Did you ever enter into a contract, sign a paper, whereby somebody would locate you on some land in the Siletz country?

A. That is, at any time?

Q. Yes.

A. Well, I expect I did.

Q. And when was that, Mrs. Durkee?

A. It was in 1902, I think, but I am not certain; but I think it was.

Q. In 1902?

A. So I think.

Q. Who came to see you about it?

A. I couldn't tell you. That is, I would have to consult an old diary, because I don't remember; and when I gave my testimony before they looked up the old diary, and so had the dates, which I have not now.

Q. Did you ever visit any of the lands in the Siletz country?

A. I did not.

Q. Did you ever go down there?

A. No, sir.

Q. Would your diary show who the man was that called on you?

A. I think so.

Q. Have you that with you?

A. I have not, no.

Q. Can you bring it with you tomorrow morning?

A. I am not sure whether it is preserved or not.

Q. Well, will you try to find it tonight, so that you may bring it with you tomorrow morning?

A. Did I sign a contract?

Q. Will you try and find your diary, so that you will be able to refresh your mind, and bring it with you tomorrow? Will you do that?

A. If I have it, I will.

Mr. Goldstein: We will withdraw the witness, then, till she can find her diary.

Excused.

Mrs. Martha Miller, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Mrs. Miller, where do you live?

A. 164 East 68th street North.

Q. City of Portland?

A. City of Portland.

Q. How long have you lived here in the City of Portland?

A. 25 years.

Q. Lived here continuously?

A. With the exception of one year.

Q. Where were you living that year?

A. Salt Lake City.

Q. And what year was that?

A. I think I went there in September in 1901 and returned.

Q. Are you the widow of a soldier or sailor in the service?

A. I am the widow of a soldier, yes.

Q. When did he die?

A. The 27th of April, 1893.

Q. Do you know John L. Wells, an old soldier?

A. Slightly, yes, sir.

Q. Did he ever call upon you at any time with reference to filing upon some Siletz lands?

A. He did.

Mr. Hall: Same objection to this, your Honor, as to the other testimony for the same purpose.

Objection overruled. Exception allowed.

Q. Do you remember when that was, Mrs. Miller, how long ago, how many years ago?

A. Well, it seems to me it was about 1900, but I wouldn't say positively.

Q. Some time in 1900?

A. I think that is when it was.

Q. And what did he say as to what you could get and what you should do, and how he was to get it for you, and whom he was doing it for, etc.? Just tell the jury the story about it.

A. It seems to me this was about the pith of it: He told me that there was a law now under which a soldier's widow could procure a homestead.

Q. Just speak up a little louder so the jury can hear.

A. He told me there was a ruling now under which a soldier's widow might procure a homestead without the residence upon it; and that there was —I don't know whether he said a company or not. I can't remember as to that. But there was someone who proposed to finance widows; in other words, to make the improvements for them, and when the

proofs were made, final proof—I think that is the way it was—they were to be given a mortgage; I think these people that financed it were to be given a mortgage. Gentlemen, remember this has been years ago, and I had no idea of having to recite it, or I would have kept it maybe a little straighter in my memory. But they were—whoever this was was to finance it—there was no names given me; but there was somebody that proposed to finance it; and when the improvements were done the homesteader was to give a mortgage to that party to secure them for the outlay of money for improvements. Well, I gave it a little thought, of course, but I was not prepared to do anything of myself. So it went on—I couldn't tell you how long—but finally someone—I don't think it was Mr. Wells; I don't think he come to see me; if he did I don't remember it; but some way I was asked to go to Mr. Potter's office, which I did. And he talked to me about it. I can't remember what was said, only I do remember this: I said, "You are an attorney, Mr. Potter?" And he said, "I am." I said, "Is this all straight business?" He gave me the contract, and I read it. He said, "It is." "Well," I said, "Of course I know that I have a homestead right, and I want that right, but I don't want anything that is not right." And he said, "It is all legitimate, Mrs. Miller. If it wasn't I wouldn't be dabbling with it myself." Well, then, I cannot tell you when it was, or how long, or anything about

what time elapsed; but some way I went to Mr. Potter's office—I suppose he knew about me likely; I cannot say positively as to that; but I know I went to his office, and I met there a Mrs. Bushong and a Mrs. Collins, if I remember the names correctly, and we went to Oregon City and made a filing.

Q. Who paid the expenses of the trip to Oregon City?

A. Why, Mr. Potter paid my fare.

Q. He went along with you, did he, and the other two ladies?

A. Yes, sir.

Q. Were they soldiers' widows, the other two that went with you?

A. Yes, sir.

Q. Who paid the expenses of filing in Oregon City?

A. I guess he did. I never had anything to do—I was not to have anything to do with the expenses.

Q. Did you ever see the land?

A. I did not.

Q. Who furnished you the description of the land?

A. I guess Mr. Potter did. I know he gave me the numbers of it, for I asked him.

Q. You didn't know where the land was located, did you?

A. I knew something about the Siletz country from looking at the map.

Q. I mean, you didn't know just where it was?

A. No.

Q. You didn't know what kind of land it was?

A. No. He told me it was valuable land.

Q. Did you intend to live on the land and make it your home?

A. I did not.

Q. Did you tell that to Mr. Potter, or did he know it?

A. I guess he did. I don't know. I don't know.

Q. What were you to do after you got the patent to the land?

A. Well, if I remember right now—I don't know whether this was in the contract, or whether it was just told me, that this company would give me $200 besides what they had invested in improvements on the place if I concluded I didn't want it.

Q. That was the understanding, then, that you were to get $200?

A. I could have $200, yes. There was nothing compulsory about my taking it, but I could have $200 if I didn't want the land.

Q. Well, that is what you intended to do after you got the patent, wasn't it?

A. Yes, I did.

Q. Did you sign the contract in Mr. Potter's office?

A. I think I did. I remember of reading the contract in his office, and I think it was there I signed it.

Q. And did you give him a mortgage after you filed on the land?

A. Well, now, I don't remember that I did. I signed in Mr. Potter's office. The day he paid me $200, I signed a blank instrument; it seemed to me it was a quitclaim deed. Now maybe it was a mortgage. I wouldn't say positively.

Q. Did you make final proof, do you know, in order to get patent?

A. I was supposed to. I went through the form.

Q. Who attended to all the details and arrangements?

A. I couldn't tell you. I suppose Mr. Potter did.

Q. How many times did you go to Oregon City in connection with this case?

A. Well, it seems to me that I went three times. It seems to me that one time we went and it was Labor Day, and there was no business transacted; consequently we come home and went again. Now, it seems to me that was when the final proof was supposed to have been made.

Q. Who notified you when to go to Oregon City?

A. Mr. Potter did, I guess. I never had anything to do with anybody but Mr. Potter in connection with it, with the exception, as I tell you, Mr. Wells solicited me.

Q. Did you ever get patent to this land?

A. I did not.

Q. And why didn't you get patent, do you know?

A. Well, I guess because the transaction wasn't legal. I don't know.

Q. Who told you the transaction was not legal?

Mr. Hall: She said she supposed that.

A. Why, I don't know. I suppose I didn't really realize it until we had to go to court.

Q. Did you sign a mortgage to Potter or to Jones?

A. If I did I don't remember. I had nothing to do whatever with Mr. Jones.

Q. Did you get any money at all from Mr. Jones, or Potter or Wells?

A. I got $200 from Mr. Potter.

Q. And when did you get this $200 from Mr. Potter?

A. Well, I think that was—I don't know whether it was in August or September, but it seems to me it was the latter part of August, I think, of 1901.

Q. What did you get the $200 for, Mrs. Miller?

A. Well, I was supposed to sign over my right to them.

Q. Well, but you didn't get your right, did you?

A. I got $200, what they had said I could get; it was possible for me to get.

Q. So you got your $200 before you even got your patent?

A. Oh, yes. I never saw any patent.

Q. And the understanding was that you were to transfer the patent, after you got it, to Potter?

Objected to as leading and suggestive.

Q. Do you know why you got $200 before you made the final proof?

A. I didn't get it till after.

Q. You got it after you made final proof?

A. Yes.

Q. This $200 was to cover what? I want to be sure, Mrs. Miller.

A. Well, I guess it was for that quitclaim deed I made. I don't know.

Q. That is the fact, isn't it?

A. I think so.

Q. For the quitclaim deed?

A. That was the wind-up of the affair. It was the final thing.

Q. But there was no quitclaim deed, was there?

A. What is it?

Q. There was no quitclaim deed, was there?

A. Well, I say it has been so long ago, it kind of occurs to me that is what it was, but I am not positive. I will say it was a blank instrument.

Q. Is this your signature, Mrs. Miller?

A. I think it is. I always write my name that way.

Mr. Goldstein: I offer in evidence the original proof paper of the witness, Mrs. Miller.

Mr. Hall: Objected to as wholly incompetent under the ruling of the court. It has no tendency to show any intent on the part of the defendant in any way.

Objection overruled. Exception allowed.

Marked "Government's Exhibit 21."

Government's Exhibit 21, being homestead proof, testimony of claimant, Martha Miller, for the SW¼ of Sec. 23, Twp. 9 S., R. 11 W. of W. M., being on Government Form 4-369, and subscribed and sworn to before Wm. Galloway, Receiver of the Land Office at Oregon City, Oregon, on the 3d day of September, 1901. And on the reverse side of said exhibit being the final affidavit of Martha Miller required of homestead claimants, subscribed and sworn to before the same officer on the same date. Attached thereto is the testimony of DeWitt Danforth on Government Form 4-369, subscribed and sworn to before Wm. Galloway, Receiver of the Land Office at Oregon City, Oregon, on the 3d day of September, 1901. On the reverse side of said exhibit is the testimony of John Mitchell on behalf of the same claimant, subscribed and sworn to before the same officer on the same date.

Q. Did you have a family at that time?

A. I had.

Q. What did the family consist of?

A. Two daughters.

Q. And how old were they at that time, 1900?

A. One was born in 1882; the first in 1877, and 1882.

Q. One was 23 and the other was 18?

A. Yes, sir.

Q. And they were living with you and making their home with you?

A. Yes, sir.

Q. And you lived there continuously, did you?

A. Yes, sir, with the exception of the one year I lived in Salt Lake City.

CROSS EXAMINATION.

Questions by Mr. Hall:

Q. Mrs. Miller, at the time you had the first talk with Mr. Potter regarding a homestead, did you not understand that widows were entitled to homestead, the widows of deceased soldiers?

A. I did.

Q. And did you not understand that the widows of deceased soldiers were not obliged to live upon the homestead?

A. That was the way it was represented to me.

Q. Beg pardon?

A. Yes, sir. That is the way it was represented to me, that they were not compelled to live on a homestead.

Q. I will ask you if you knew that was a general understanding amongst widows of old soldiers?

A. Yes.

Q. That the Government did not require the widows to go out and live upon these homesteads on the frontier?

A. That was the way I understood it.

Q. And that was the way Mr. Potter understood it, was it not?

A. Yes, sir.

Q. And you both had the same understanding? And when you went into this, it was not with any fraudulent intent?

A. It was not.

Q. But you thought you were complying with the law?

A. I did.

Q. And intended to do so?

A. I did.

Q. And you entered into a contract to have these improvements made, a cabin built and some ground cleared?

A. I can't remember just what the improvements were to be, but I do remember the clearing of ground.

Q. Now, in that contract, I will ask you whether or not it was not agreed between you and Mr. Potter for the locating fees, the fact that they had gone out and looked up this land, and prepared the papers and one thing and another, that their fee should be $150?

A. I can't remember a thing about that.

Q. You don't remember that?

A. No, I don't. I remember this, that they were to defray the expenses.

Q. Reading from one of the like contracts: "And the party of the first part further agrees to employ, and does hereby employ the party of the second part, to cultivate the land to be taken up under the foregoing agreement, or so much thereof as

is required, and for the time required by the laws of the United States, in order to procure title thereto." And you were correct about that, that there was not to be any residence; it was the cultivation; and you and he both understood that that was all that was necessary, was to have the cultivation there?

A. Yes, that was all that I remember.

Q. Now, they also agreed to advance you the fees for the land office, land office fees and all necessary expenses, not to exceed the sum of $40. Do you recall that?

A. No, I do not.

Q. It is a good while ago?

A. Yes.

Q. Now, then, was this in the agreement: "That the party of the second part"—that would be Mr. Potter, or Jones, or whoever the contract was with —"further agrees that, after final proof shall have been made upon said claim, he will, at the option of the party of the first part, procure for the party of the first part a loan not exceeding the sum of $640"?

A. Yes.

Q. Now, in that was to be included $200 in cash?

A. Yes.

Q. Do you recall that?

A. I guess so, yes. I remember.

Q. Isn't it a fact, refreshing your memory, Mrs. Miller, that after you had gone to Oregon City and

made your final proof, you were advanced $200, in conformity with this contract?

A. Yes.

Q. And you were to execute a mortgage on the place after you had made your final proof?

A. Yes, that is right.

Q. That is right, isn't it?

A. Yes.

Q. But after that, you had no agreement to convey it to them? That is, in other words, you had the privilege of paying off this amount of money and keeping the property, or selling it to any person you saw fit, didn't you?

A. I couldn't have paid the expense, no.

Q. What is that?

A. I couldn't pay the expense, no.

Q. No, but I say, you had the privilege of selling it to anyone you saw fit?

A. I remember now, since you read the contract, but I couldn't have told a word of it.

Q. Well, it is a long time ago—18 years ago.

A. Yes.

Q. But you were not under any obligations to sell it to Mr. Potter or Mr. Jones?

A. I was not under any obligations, no.

Q. No, you could sell it to whomsoever you saw fit?

A. I could have kept it if I had paid the expenses.

Q. If you had paid the expense?

A. I could have kept it by paying the expenses.

Q. Or you could have sold it to some other person, and let them have assumed the mortgage there was against it?

A. Yes.

Q. In other words, you had no contract that would oblige you to turn it over to Mr. Jones or Mr. Potter?

A. No, only in that way, that I remember now, I was to give a mortgage for a loan. I don't remember just what it was.

Q. Now, in making your final proof—you are Martha Miller, aren't you?

A. Yes.

Q. You didn't claim before the land office at Oregon City that you had ever lived on this place?

A. I did not.

Q. Now, in answer to the question 4: "When was your house built on the land and when did you establish residence therein? Describe said house and other improvements which you have placed on the land, giving total value thereof. A. I have never established a residence on the land, being the widow of an ex-soldier." That was your answer, was it?

A. Yes.

Q. And that was true?

A. That was true.

Q. "For what period or periods have you been absent from the homestead since making settlement

and for what purpose; and if temporarily absent, did your family reside upon and cultivate the land during such absence? A. I have never resided on the claim, but I have had the place cultivated." And that was true?

A. Yes.

Q. And the land office on hearing of your proof were not deceived by you in any way?

A. If they were, I don't know it.

Q. You were the wife of an ex-soldier?

A. I was.

Q. And you established that to their satisfaction?

A. Yes.

Q. And you told them that you had not lived on the land?

A. Yes.

Q. And still they issued you a final receipt, final certificate, and on that you gave a mortgage to Mr. Jones, and he paid you the $200?

A. Yes.

Q. Now, isn't it a fact that after that you were informed that the Land Department at Washington had changed its ruling, so that a widow would not be entitled to a homestead without living on it?

A. Now, this is the way I remember it: That they asked for additional proof, but what that proof consisted of I couldn't say.

Q. Well, do you recall being informed that a

new ruling had been made by the land department, which showed that your entry—

A. I do not. It was final proof.

Q. What?

A. It was final proof, as I remember it, that they asked for. I mean more proof, additional proof, I would say.

Q. Well, they issued you your certificate, however, didn't they, a final certificate, when you gave the mortgage?

A. I don't remember anything about that.

Q. You don't know whether they did or not?

A. No, I don't remember.

Q. But your claim was afterwards cancelled, wasn't it?

A. Yes, sir, my quitclaim.

Q. And Mr. Jones lost this money, didn't he?

A. Yes, sir. I don't know Mr. Jones. I relinquished my right back to the Government.

Q. Back to the Government, when you found that it was not in accordance with the present rulings?

A. I did.

Q. You relinquished and quit it?

A. I did.

Q. And neither Mr. Potter or Mr. Jones made any objection, did they?

A. I don't know. I have never seen Mr. Jones.

Q. That is, as far as you know, they never objected to your making the relinquishment?

A. No, sir.

REDIRECT EXAMINATION.

Questions by Mr. Haney:

Q. Mrs. Miller, who was it told you that there had been a law or ruling to the effect that a soldier's widow could acquire a homestead without living on it at all?

A. Mr. Wells.

Q. That is the first you had heard of that?

A. Yes, sir.

RECROSS EXAMINATION.

Q. I will ask you, Mrs. Miller, one other question, with the permission of the court. Did you ever know Mr. Jones, or meet him in the transaction in any way?

A. Mr. Jones was to my house once.

Q. To your house just once?

A. Yes; after I come back from Salt Lake City.

Q. After this was all over?

A. Yes, sir.

Q. Yes, but during the time that this homestead was going on?

A. Never.

Q. You didn't see Mr. Jones at all?

A. Never; I never knew Mr. Jones.

Excused.

Adjourned until 10 A. M.

Portland, Oregon, December 5, 1918, 10 A. M.

Mr Haney: If Your Honor please, before we call any witness, in turning over in my mind the ruling of the court yesterday in regard to the admission of the testimony in the former case, I have some question about whether the record shows the proceedings as it should be shown, and at this time I ask permission to file with the court a written offer of what the Government would prove by the witness, Miss Fleming, who has the testimony given by those parties.

Court: I don't think it is necessary to make your offer in writing, but you may make that offer if you desire.

Mr. Haney: We may file it?

Court: Yes. You may make that offer if you desire in open court, as you suggest, in writing, but it is not necessary to be made in writing. It can be made orally, but you may make it in writing if you desire.

Mr. Haney: I think it is just as well to make it in writing.

Court: I think the record ought to show you are making that at this time, with leave of the court, so it will be available when you desire it.

Mr. Haney: Yes, Your Honor.

John L. Wells. Recalled for the Government.

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Mr. Wells, did you know Richard D. Depue in his lifetime?

A. I did.

Q. Did you know Thomas Johnson in his lifetime?

A. I did.

Q. Did ou know Thomas Johnson in his lifetime?

A. I did.

Q. And Edward C. Brigham in his lifetime?

A. I did.

Q. Were those four entrymen secured by you to file upon these lands?

A. I think they were, all of them.

Q. Did you know where each of them lived during the time the entries were pending?

A. I did.

Q. And where were they all living?

A. Well, I cannot just tell the location.

Q. I mean what city and state.

A. They lived in Portland.

Q. They all lived in the City of Portland.

A. Yes.

Q. During all of this time?

A. Well, I won't say about Johnson. He lived on this side of the river. I don't know much about him.

Q. But as to Brigham, Gannon, and Depue, they all lived in the City of Portland?

A. Yes.

Q. And made your home here in the City of Portland then?

A. Well, off and on, yes. Most of the time I called it my home, yes. Sometimes I was off for six months at a time.

Q. But where have you been maintaining your home?

A. This is my home, yes; and Oregon City for about 30 years was my home, and then I moved from there to Portland.

Q. Outside of Oregon City and Portland, have you lived in any other place in the State of Oregon during the past 52 years?

A. Just merely when I was building steamboats off for six months, maybe five months, six months at a time.

Q. Where was your home during the years 1901 and 1902?

A. I lived in Portland.

Q. What was your business at that time?

A. I was a contractor, steamboat builder.

Q. Did you serve in the war of the rebellion?

A. Yes, sir.

Q. Did anyone speak to you with reference to taking up some homestead claim in the Siletz Reservation?

A. Yes, sir.

Mr. Hall: If the court please, we offer the same objection to this class of testimony. This man was

not one of the nine persons that it is alleged took claims.

Objection overruled. Exception allowed.

Q. Who first spoke to you about it?

A. Well, I don't know who. There was a Mr. Wells attending to it. I spoke to a lot of the boys at the time they was taking the names down over on the east side, as I came along.

Q. Well, what did Mr. Wells say to you about it?

A. Well, they told me that we was all entitled, as I understood, we were all entitled to a land grant, all the old soldiers.

Q. Did you know anything about the homestead laws, or anything of that kind?

A. No, I never; nor I never read of it that I know of before.

Q. Who told you about what the homestead laws provided as to whether you were entitled to it or not?

A. I don't know as anybody told me about them; just mere talk.

Q. What did Mr. Wells tell you?

A. Well, he said we was entitled to land.

Q. Then, what took place then?

A. And they would go and locate us.

Q. Who was to locate you?

A. This Mr. Wells. That is the only one I knew at the time.

Q. Did he take you and introduce you to anyone else in connection with this?

A. No, not at that time.

Q. What was the next thing done?

A. We signed a contract.

Q. Who is "we"?

A. Well, all the old soldiers. I signed it for one.

Q. Where did you sign your contract?

A. On the East Side. In a little office on the East Side.

Q. Mr. Wells' office?

A. Yes, it was Mr. Wells.

Q. And what took place afterwards? Did you get any money?

A. Did he give it?

Q. Did you get any money when you signed the contract?

A. No, sir.

Q. Did you get any money after that?

A. Not till I sold my place.

Q. Whom did you sell it to?

A. I sold it to Mr. Jones.

Q. Now, Mr. Paquet, after you signed the contract, what was the next thing that was done in connection with that claim?

A. Well, we was all to go down and look at the land.

Q. And who took you down to look at the land?

A. Well, Mr. Wells went with us.

Q. Who went down, do you remember?

A. No, I don't. There was quite a number of them.

Q. Where did you go?

A. We went down to Toledo, and from there we took a team and went from that into the Siletz country, up through the place there.

Q. Who paid the expenses? Did you?

A. No. They bought the ticket. I think I paid for my hotel bill there that night at Toledo. They paid the car expenses.

Q. Was it reimbursed?

A. The transportation?

Q. They paid the railroad fare down to Toledo.

A. Yes.

Q. And after you got to Toledo, what did you do?

A. Well, we looked around a little bit and we slept there on the Siletz on the bank, and they showed me where my corner was. I think they had a couple of men working there, cutting roads. They showed me where, I think it was my west corner and my east corner. I followed that line down, and of course I looked up and down what the balance of it looked like.

Q. When you saw that land, did you intend to make that your home?

A. Well, yes, in the first place.

Q. I mean, when you saw the land and saw the character of the land.

A. Well, I didn't like it much for a home.

Q. Did you intend to make it your home?

A. Well, not so much as I actually thought that I owned a piece of land, was entitled to it.

Q. Did you intend to make it your home?

A. And then I could do as I pleased with it.

Court: Answer the question, please.

A. What?

Court: Answer his question.

A. Yes.

Q. Did you intend to make it your home when you saw the character of the land?

A. Well, part of the time. I didn't calculate to live there all the time. I thought it would be a good place to go out and stop a while occasionally.

Q. Did you intend to give up your home in Portland, and go and live there?

A. I had no—I had lost my wife before that; I was boarding out and living out all the time. I had a little home on the East Side, but I didn't stay there; it was rented.

Q. Did you intend to give up your home in Portland and go and live there?

A. I didn't calculate to give up my business altogether, no. The business was worth more than that.

Q. You were then in the contracting business?

A. I was in the contracting business, building steamers.

Q. Here in the City of Portland?

A. In the city and all over.

Q. After you saw the land and noticed the char-

acter of the land, did you file on the land afterwards?

A. Yes, sir.

Q. Where did you file—at Oregon City?

A. Oregon City.

Q. Who took you there?

A. It was Mr. Potter, I think.

Q. Who paid your expenses there?

A. I don't remember whether I paid my own up there or whether he did.

Q. Who paid the fees for the filing?

A. He did.

Q. Did you give him any security?

A. Nothing more than what this contract we had signed; we was to pay those expenses.

Q. Well, did you give him any security for the obligation you assumed?

A. I don't remember.

Q. After you filed on the land, what was the next thing done?

A. I don't remember what the next thing was.

Q. How long after that did you go and visit the place?

A. Well, I missed one trip.

Q. How long after you filed did you go and visit the place?

A. I didn't go for a year. I missed one trip. I was over at Colorado—Needles—I couldn't get back. I was building a steamer there. I missed one trip. Then, when I came back, we took the second trip.

Q. So you didn't go there until a year afterwards?

A. Pretty near a year. It was the second trip.

Q. Did you ever live on the place?

A. No, sir. I slept one night on it.

Q. Who paid your expenses on the visit you made down there?

A. The last time?

Q. Yes.

A. I don't remember who it was paid them, whether it was Mr. Wells.

Q. Did you pay the expenses?

A. No.

Q. After the second visit, did you have a talk with anyone as to the proof you were to make, the final proof?

A. Yes.

Q. Whom did you talk with?

A. When we went to make the final proof up there, why, they served a notice on us, contest, and I got disgusted with the land then. I thought there was going to be a suit over it, and I came down here and went to see Mr. Jones and asked him if he would buy it. I went myself. And he wanted to know what I would take. I told him I would take $140 for my land right. And he didn't want to give that. And then he gave me, I think it was $120. He says, "I will give you $120."

Q. You mean $220, don't you?

A. And I think that is the way that stood. I

went to see him myself to sell the land, sell my right.

Q. Pardon me, aren't you mistaken about the amount? Wasn't it $220?

A. $220, yes. I wanted $240, and I think it was $220 he gave me.

Q. And how much did he offer you?

A. He offered me $200, and I didn't want to take that. I wanted $240, and I think it was $220 he gave me.

Q. Did you discuss the contract that you entered into?

A. No; I just merely told him that I would sell him my right. That paid for everything.

Q. And was that before or after you made final proof?

A. Yes, that was when we went up there.

Q. Was that on the way up to make final proof?

A. No, after I came down here; a few days after I came down here.

Q. A few days after you made the final proof?

A. Yes.

Q. You knew at the time you made final proof that there was a contest?

A. Yes. They presented that to me at the time right there. Well, that is what disgusted me. I thought there would be trouble.

Court: Did this man get a patent for his land?

Mr. Goldstein: No, sir.

Q. Did you ever receive any notice from the land

office as to when you were to make final proof or call with your proof witnesses?

A. Not that I remember of.

Q. Did you arrange to get your proof witnesses? Did you arrange who your proof witnesses were to be?

A. No.

Q. Who attended to that for you?

A. Well, I paid no more attention to it after I sold it.

Q. Well, I mean before you sold it, when you made final proof.

A. Well, I don't remember who.

Q. Did Potter go with you when you made your final proof?

A. Yes, Mr. Potter was along.

Q. When you made final proof, where were you living then?

A. I was in Portland then.

Q. Was that your home, at Portland?

A. It was my home when I was here.

Q. When you made the final proof, it shows that you gave your residence as Siletz.

A. Well, that was we was supposed to have a residence at that time. We was supposed to own this land.

Q. Did someone talk it over with you?

A. What?

Q. Did somebody suggest Siletz to you?

A. Of course, we understood, yes.

Q. Who did the suggesting? Who suggested that to you?

Mr. Hall: If the court please, it is leading and suggestive.

A. I don't remember who.

Mr. Hall: He has not testified that anybody suggested it.

Court: Well, he has answered the question, he doesn't remember who.

A. No, I don't remember who.

Q. Was it talked over with anyone as to the place where you were to give your residence? Had you had a talk with the boys or with anyone?

A. How is that?

Q. Had you had a talk with anyone as to what residence you were to give?

A. No, just amongst the old soldiers.

Q. Was Mr. Potter present?

A. Not that I—I don't know whether he was or not. I forget.

Q. Is this your signature?

A. Yes, sir.

Q. And is this your signature?

A. Yes, sir.

Q. And this?

A. Yes, sir.

Q. And this?

A. Well, it looks like it. I think it is.

Mr. Goldstein: I offer in evidence the contract signed by the witness, Louis Paquet, with respect

to this particular land; same form of contract as the others.

Mr. Hall: We object to it as incompetent and immaterial.

Court: What are those other papers you have?

Mr. Goldstein: This is the final proof testimony of the claimant, Louis Paquet, covering the same land.

Court: Do you object to that?

Mr. Hall: Yes.

Objection overruled. Exception allowed.

Mr. Goldstein: The other is testimony of Paquet as proof witness to the claims of William T. Everson and Menzo J. Morse. He was proof witness for two other claimants.

Court: Does that include the lands in suit?

Mr. Goldstein: Not the lands in suit.

Mr. Hall: I object to it, Your Honor. I cannot see how that would throw any light on this. If it is anything, I would judge it would be for the purpose of impeaching their own witness.

Mr. Goldstein: I haven't asked any impeaching questions. I will withhold these for the time being.

Paquet Contract, marked "Government's Exhibit 22."

Government's Exhibit 22, signed by Louis Paquet, and being in substance the same as Government's Exhibit No. 1.

Testimony of Claimant Paquet, marked "Government's Exhibit 23."

Government's Exhibit No. 23, being the testimony of Louis Paquet as claimant under homestead entry No. 13105, for the S½ of NE¼ and the NW¼ of SE¼, of Sec. 22, the SW¼ of NW¼ of Sec. 23, Twp. 9 S., R. 10 W. of W. M., and subscribed and sworn to by Louis Paquet on the 3d day of December, 1902, before George W. Bibee, Receiver of the Land Office at Oregon City, Oregon. Attached to said exhibit is the final affidavit required of homestead claimants, subscribed and sworn to by said Louis Paquet before the same officer, on the same date. And attached to the same exhibit is the testimony of W. T. Everson and Menzo J. Morse, subscribed and sworn to before the same office on the same date.

Q. Did you visit any other claims outside of yours when you went down to Siletz?

A. Oh, yes, I slept on one one night with one of the other parties—Mr. Hummel, I think it was.

Q. Mr. Hummel?

A. Yes, I went and slept with him on his claim.

Q. Did you visit any others, other than Mr. Hummel's?

A. Oh, we walked around, all around, to look at them.

Q. Did anybody ask you to appear as proof witness for other claimants?

A. No, not that I know of. We just looked at the land, and supposed this was all the land that

we was looking at. There was a body of land there.

CROSS EXAMINATION.

Questions by Mr. Hall:

Q. Mr. Paquet, when you came to the State of Oregon, in 1852, the state was not settled; that is, the lands of the state were not taken up to a very great extent, were they?

A. No; there was one little street with stumps on it. Water Street had a few little shanties on the river. The other side was not taken up.

Q. And you have lived here since that time and had an opportunity to observe in what manner the state was settled?

A. I didn't understand you.

Q. I say, you have lived here since that time and had occasion to observe and know the manner in which the state was settled; that is, the way that homesteads were taken up and lived upon.

A. Well, yes. Homesteads was taken up all of this time. Homesteads was always—I remember that—but I never paid no attention to what the laws was.

Q. Now, I will ask you whether or not it is not a fact that there was a general belief amongst the people in the State of Oregon, and particularly amongst the settlers in the State of Oregon, that if they visited their homesteads or was not off their homesteads to exceed six months in the year, that they were complying with the law?

A. Yes.

Mr. Haney: Objected to on the ground it is not proper cross examination.

Objection overruled. Exception allowed.

A. Yes, I knew they was taking up—they used to take up a homestead and go out and make a visit once every six months; and that is the way there was a great many of those homesteads taken up.

Q. And those went to patent and were never questioned, so far as you know?

A. Yes, sir.

Q. And I will ask you whether or not it wasn't the general belief here, so far as it came under your observation, that when a man had done that he had complied with the law of taking up a homestead?

A. I don't understand you?

Q. I say whether or not it was not a general belief in this community that if a man was not off his homestead for more than six months he had complied with the law?

Mr. Haney: Objected to as incompetent, irrelevant and immaterial, and not proper cross examination; and without formally objecting each time, I would like an understanding that all of this is going in subject to our objection.

Court: Very well.

Mr. Haney: And we may have an exception?

Court: Yes.

Q. Now, when you entered this homestead over at the Siletz, did you believe that it would be a sufficient compliance with the law if you visited your homestead there every six months?

A. Well, I believed that we had a right to this amount of land.

Q. You believed that the old soldiers or those who had served in the War of the Rebellion had some rights that were not given to other people in relation to taking up land?

A. Yes, sir.

Q. In other words, that the Government was dealing with the old soldiers in a different manner than they were with the ordinary citizen who had not served in the army? That was your belief?

A. Yes, sir. I know several years ago, a good many years ago, the old soldiers was selling their rights; parties were buying them in. I guess you understand that yourself.

Court: What was that—selling scrip?

A. Yes.

Q. That was the Soldiers' Additional Homestead Law you refer to, where there was a kind of scrip issued, and the soldier could either sell that scrip or place it upon land?

A. Yes; yes, that is right.

Q. Without any residence upon the land whatsoever, or cultivation. And what was your belief as to a requisite, as to whether it was required

that an old soldier should actually live upon the land?

A. Yes, sir.

Q. Did you believe that he could get a claim without living on it actually?

A. How is this?

Q. Did you believe that an old soldier under the law was entitled to get a claim without actually going out and living on it?

A. Yes, sir. Let me explain this again. Then I believed that those parties, that there was parties working on this land would answer the same purpose—represented us.

Q. And at the time that you went out and took this homestead, that was your belief?

A. Yes, sir.

Q. And how long had you had that belief or impression, Mr. Paquet?

A. Well, for a good many years.

Q. Prior to that time?

A. Yes.

Q. And when you took up this homestead, did you have any idea or intention of defrauding the Government in any way?

A. I didn't understand you.

Q. I say, you didn't have any intention of defrauding the Government when you took up this homestead?

A. No, sir.

Q. None whatsoever. Now, you spoke of a con-

tract that you entered into with Mr. Jones whereby he was to build a cabin and clear some ground, and pay the expenses, and then secure a loan on it after final proof. Now, you didn't have any other contract than that with Mr. Jones, did you?

A. No, sir. I didn't know him before. I didn't know Mr. Jones before that. Didn't know him then.

Q. About when in the course of the proceeding did you meet Mr. Jones first, if you recall?

A. What?

Q. When did you first meet Mr. Jones?

A. I met him—oh, it was quite a while after. I wanted to get a little change one afternoon, and I met one of the old soldiers, and he says, "You can borrow it if you want to from Mr. Jones." "Well," I says, "I am not acquainted with Mr. Jones." Well, he took me up there, and I borrowed a little money on my personal note.

Q. About how long after you made your first visit to the land was that?

A. I don't know how long. It might have been five or six months—three or four months; five or six. I don't know.

Q. Then you went to Oregon City and made your final proof?

A. Yes.

Q. And then after that you went to Mr. Jones and offered to sell him your interest in this land?

A. Yes, sir. I went and offered to sell him myself.

Q. He didn't come to you and ask you to buy?

A. No, sir. He didn't care much about buying it at that time.

Q. He wasn't anxious to buy it, then?

A. No. There was a contest entered against it.

Q. And you asked him $240 over and above—

A. All expenses.

Q. The expenses, of course, had been—

A. And he wanted to give me $200 and I wanted $240, and at last I think he give me $220. I wouldn't say for certain.

Q. Had you tried to make a sale to any other person?

A. What?

Q. Had you tried to make a sale to anybody else?

A. No, sir. Because I thought it would not be proper after he had went to this other expense.

Q. But you could have sold to anybody so far as you know?

A. I reserved that right when I signed this contract.

Q. Yes. You had a right to sell to anybody you saw fit?

A. I could do as I pleased with this land.

Q. But you never got a patent to the land, did you?

A. I never; no.

Q. And some proceedings were had whereby the entry was cancelled, wasn't it?

A. What?

Q. The entry was cancelled, wasn't it?

A. Well, I don't know whether it was or not. I never paid no more attention to it.

Q. You don't know as to that?

A. No; I never paid no more attention to it.

Q. You never had anything more to do with it after that time?

A. I didn't have anything more to do with it, no.

REDIRECT EXAMINATION.

Q. Did you ever pay Mr. Jones back any of the money that you received from him?

A. Did he pay me any of the money back?

Q. Did you ever pay him any of the money you received from him?

A. Nothing more than only this note.

Q. Did you ever pay him any of the expenses he incurred in making entry and final proof?

A. No, he never paid me.

Q. Did you ever pay him back?

A. No.

Q. You never were able to convey him any title to the land, were you?

A. I just merely sold my interest.

Q. Well, was your interest worth anything after the contest?

A. Well, I didn't think it was.

Q. What did Mr. Jones give you $220 for?

A. Well, I supposed he thought it might come

out all right. I don't know. I couldn't tell you that.

Q. That money was paid to you while the contest was pending, was it?

A. I didn't understand.

Q. While the contest was going on, you got that money from him, did you?

A. Yes, sir.

Q. And you never paid him back?

Court: He said so.

A. They paid for that, I say, Mr. Jones. You mean Mr. Potter paid for all there was up there?

Juror: He says you never paid Jones back this $220.

A. Oh, no; no.

RECROSS EXAMINATION.

Q. Now, Mr. Paquet, isn't it a fact that instead of you making a deed to Mr. Jones, you made a mortgage on this property?

A. That I really owned it?

Q. Didn't you make a mortgage to Mr. Jones at the time that he gave you the $200 after final proof?

A. Well, of course I supposed I owned this land, and supposed I had a right to; there would be a contest served on me, and that there would be a law suit or something or other come up and bother for years.

Q. You would have a right to mortgage it; but didn't you mortgage it to Mr. Jones instead of deed-

ing it? You didn't deed it, did you? You mortgaged it?

A. I mortgaged it. Yes, I have mortgaged it.

Q. And you never did make him a deed?

A. No.

REDIRECT EXAMINATION.

Q. Well, did you expect to do anything further after you gave him the mortgage?

A. No.

Q. You were through?

A. No; held himself good.

Q. Do you feel you still owe him the money?

A. How is this?

Q. Do you feel that you still owe him the money that he paid you, that he gave you?

Juror: Do you still feel as if you owe Mr. Jones the $220?

A. No, because he was taking the same chances I was.

Excused.

M. J. Morse, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Mr. Morse, where do you live?

A. 545 East 28th Street, Portland, Oregon.

Q. How long have you lived in Portland, Oregon?

A. Forty years.

Q. Have you lived here continuously?

A. Yes, sir.

Q. Have you made your home any place else than Portland, Oregon, during this time?

A. No, sir.

Q. What was your business in 1900, and 1901, and '02?

A. Working for Sanborn, Vail & Company, First Street.

Q. Are you a veteran of the War of the Rebellion?

A. I am.

Q. Did you file any entry for some land in the Siletz Reservation?

A. I did.

Mr. Hall: Same objection, Your Honor, as to this witness. This is not one of the nine.

Objection overruled. Exception allowed.

Q. At whose request?

A. Mr. Wells', I think.

Mr. Hall: I would like our objection to go to all of the testimony of this witness, without interrupting.

Court: Very well. Let it be understood.

Mr. Hall: It may be deemed that our exception will be allowed to it?

Court: Yes.

Q. What did Mr. Wells say to you the first time he saw you about this?

A. Well, I couldn't say as to just what was said, but I know we talked about a contract, and I think he gave me a copy of the contract, and I took it home and read it over with my wife.

Q. And then what was the next thing done?

A. Well, soon after that I signed the contract, I think, in Mr. Wells' office.

Q. In Mr. Wells' office?

A. I think so.

Q. Did you know whom you signed the contract with?

A. Well, I presume I knew it was Mr. Jones. I had no acquaintance with Mr. Jones at that time.

Q. Well, what did Mr. Wells say as to whom he was acting for?

A. Probably Mr. Jones.

Q. After you signed the contract, what was the next thing done?

A. Well, I think I probably was notified of the time to go to Oregon City and make the filing.

Q. Did you make the filing before you went to visit the land?

A. I did.

Q. Who told you on what land to file?

A. I couldn't say. It might have been Mr. Potter. I don't know.

Q. Who was along when you went to Oregon City to file?

A. I couldn't tell that. There was quite a number.

Q. Soldiers?

A. Yes.

Q. Mr. Wells Along?

A. I think he was.

Q. Mr. Potter?

A. I think so.

Q. Was that the first time you ever met Mr. Potter?

A. I think it was.

Q. Who paid your expenses to Oregon City?

A. I couldn't say.

Q. How many old soldiers were there in the party?

A. I couldn't say that.

Q. About how many?

A. Well, I can't call to mind who was there, nor how many. It might have been half a dozen.

Q. Who paid the expenses for the filing of the entry?

A. I don't know.

Q. Did you?

A. I did not.

Q. And what did you file on the land for? What did Mr. Wells say to you as to the purpose of doing this? What were you to get out of it?

A. Well, we were to use our homestead right, and I relied principally upon the contract, which would give me a right to hold the land, if it was

satisfactory, and reimburse the other party, the party of the first part.

Q. What were you going to get out of the land?

A. I don't know.

Mr. Hall: If the court please, I don't think that is a fair question. The contract shows for itself. He signed the contract. I don't think that is a proper question, what he was going to get out of the land, because it is assuming he was going to get something out of the land rather than to keep the land itself.

Mr. Goldstein: I will withdraw that question.

Q. Were you to receive any money after you made your final proof?

A. No, sir, not to my knowledge. I didn't consider that I ever made final proof. I am satisfied it never went through, and never was completed. I never saw the final certificate.

Q. Well, Mr. Morse, I am asking you, at the time you made the entry, what was the understanding as to what you were to receive when you should make final proof?

Mr. Hall: I think the contract is the best evidence.

A. I don't know.

Mr. Goldstein: Have you the contract?

Mr. Hall: No. I thought you put it in evidence.

Mr. Goldstein: Not Mr. Morse's contract.

Q. Whom did you have the contract with?

A. Who did I make the contract with?

Q. Yes.

A. With Mr. Wells.

Q. What did you do with the contract? Whom did you give it up to?

A. I couldn't say. I don't call to mind anything about the contract since that time.

Q. Have you the contract with you?

A. I have not.

Mr. Goldstein: I ask counsel to produce the contract, if you have it.

Mr. Hall: We haven't the contract. We had no notice to produce it, and couldn't produce it if we did.

Q. What was the understanding at the time you filed as to what you were to receive after you should make final proof?

A. Why the contract provided—

Mr. Hall: If the court please, I think there has been an agreement between counsel that these contracts were practically all the same, and they show for themselves; and to have this witness, after a period of 18 years has gone by, attempt to relate what was in a written contract, when counsel has here a contract which it is agreed was similar in all of these cases, I submit that the contract or such a contract as has here been introduced in evidence, should be submitted to the witness, and give him a chance to see it.

Court: I understand you signed a contract?

A. I did.

Court: That contract contained terms as to what Mr. Jones was to do and what you were to do?

A. Yes, sir.

Court: Were you to receive anything else besides what that contract stipulated for?

A. No, sir.

Court: I think that answers the question. There is no need to take up further time.

Q. Who gave you the description of the land upon which to file?

A. Well, that was done at Oregon City. I couldn't say who. It was Mr. Potter, probably. I don't know.

Q. Did you know what sort of land it was, whether it was agricultural land?

A. No, sir. If I had, I should never have filed.

Q. Wasn't that told you?

A. No; not satisfied with the location. If I had seen the land, I never should have filed on it.

Q. And how long after you filed did you go on the land?

A. Why, I think a number of months. I am not sure about the time.

Court: Did this man make final proof?

Mr. Goldstein: Yes, he made final proof.

Court: I understood him to say he made no proof at all.

Mr. Goldstein: He did make final proof, and it was contested, and he never got patent.

A. It never was completed. Never had a certificate.

Q. At whose request did you visit the land?

A. I think I was notified at the time, a lot of us getting together, by Mr. Wells.

Q. And what was the idea of going down there?

A. Why, to comply with the requirements of going onto the land.

Q. Who told you as to what the requirements were?

A. I think I knew that.

Q. You knew what the requirements were?

A. I knew.

Q. Did you know the requirements required you to see the land before you filed?

A. I am of the opinion that I did have that idea, but anyhow I didn't do it.

Q. And who paid your expenses down to Siletz?

A. They were paid by other parties. I don't know who.

Q. Did you pay it?

A. I did not.

Q. What took place when you got there?

A. At Siletz, or Toledo?

Q. Well, start out from Toledo.

A. From Toledo, we stayed there in the hotel over night. I think teams were procured the next morning, and took us out to Siletz.

Q. And where did you go when you got to Siletz?

A. We went across the river, and then down on

what I would say was the east or north side, where the principal part of the locations were, the cabins were built, and so on. There seemed to be some trouble in finding my location. We went around there considerable.

Q. Who paid the expenses at the hotel and for taking you out by team?

A. I couldn't say. I didn't pay any expenses.

Q. Did you call at Mr. Jones' office upon your return to Portland?

A. I don't know that I did.

Q. Did you see any cabin or any building on your claim?

A. On my claim?

Q. Yes.

A. Yes, sir.

Q. The first time you went there?

A. Yes.

Q. Was there any stove or furniture in the cabin?

A. No; there wasn't even a door or window at that time.

Q. No door or window?

A. The road wasn't cleared out.

Q. When you saw the character of the land, what was your intention as to whether you would live on the land, to make it your home?

A. I never intended to live on the land.

Q. Did you ever intend to make it your home?

A. No, sir.

Q. And when you got back to Portland—how long did you stay down there altogether the first time?

A. Two days and two nights.

Q. And when you got back to Portland, how long after that did you make a second visit, if at all?

A. Within six months.

Q. And who requested you to make that visit?

A. I couldn't say. I may have done it on my own volition.

Q. Who paid for your expenses? Did you?

A. I did not. I am trying to think whether I was furnished any money before starting or not; I couldn't say. I think I was, though. But I can't call to mind that I had ever been in Mr. Jones' office at that time. I don't know whether Mr. Wells gave it to me or not.

Q. Did you give any security to anyone for the payment of the expenses?

A. No, sir.

Q. And how many visits did you make altogether?

A. Three.

Q. And how long did you stay, the most at any time?

A. The second time my daughter and Mr. Marble went with me.

Q. How long did you stay there then?

A. We stayed on the claim one night, slept in

that cabin. At that time the window and door had been put in.

Q. How long did you stay the third time?

A. The third time, Mr. Marble and I went together that time; and it was very bad, stormy weather. We had a hard time getting out from Toledo horseback. We finally reached the claims. The storm was so bad that we couldn't even get a fire started, so we didn't stay on the claim that night, but went part way back to where there was a better building, and stayed there till morning.

Q. So you didn't stay on your claim at all?

A. We couldn't stay there that night.

Q. How long after the third visit was any talk made about making final proof?

A. Why, I couldn't say as to that.

Q. Who discussed with you the making of final proof?

A. I couldn't say that. I was in the habit of meeting Mr. Wells at that time every few days, same as I am now, and probably I got some of this information from him. I would like to say right here that Mr. Marble's claim and mine were very much isolated from the balance of the claims. We were off to one side about nine miles—the only two claims in that locality.

Q. Is this your signature, Mr. Morse?

A. Yes, sir.

Mr. Goldstein: I offer in evidence the home-

stead proof of the witness Menzo J. Morse, covering land in the reservation.

Same objection. Objection overruled.

Exception allowed.

Marked "Government's Exhibit 24."

Government's Exhibits 24, 25, 26 and 27, being the testimony of claimants and witnesses on behalf of each of the following claimants:

Menzo J. Morse, Homestead Entry No. 13589.

George Rilea, Homestead Entry No. 13091.

Granville C. Lawrence, Homestead Entry No. 14235.

Daniel Clark, Homestead Entry No. 14233.

All being on Government Form 4-369, and all subscribed and sworn to before the proper officers.

Q. At the time you made proof, did you hold any position here in the City of Portland, on the Board of Elections, or anything of that kind?

A. I did.

Q. What was that?

A. Chairman of the Board of Elections.

Q. Did Mr. Wells hold any such position, too, at the time?

A. I couldn't tell you. The supposition was that he did, but I have no knowledge of my own.

Q. The proof shows here that you gave your postoffice address as Siletz, Oregon. Was any discussion had between you and Mr. Wells, or anyone else, concerning the postoffice address to be given?

A. I think there was.

Q. Between whom?

A. Mr. Wells.

Q. What did he say to you about that?

A. I cannot call to mind just what was said in regard to this matter of registering here in Portland. I spoke to Mr. Wells, and says, "We ought not to register here, had we?" as we had given our address down there.

Q. Was there any talk had as to the answers to be given to the questions in making final proof?

A. I don't call to mind anything. If my memory serves me right, this matter came up just at night there at Oregon City, the final proof and contest proposition. Everything was dropped. I supposed we could have to return to Oregon City, but never did, and I never heard anything more about it. I don't think any final certificate was ever issued, or proof made.

Q. Were you asked to appear as proof witness for other claimants?

A. I believe I was.

Q. By whom?

A. Well, probably by Marble and Everson.

Q. Did Mr. Potter, or Mr. Wells, or Mr. Jones ever ask you to appear as proof witness for anyone else?

A. I don't call to mind that they did.

Q. Was any money given you by anyone for this land?

A. No, sir.

Q. When did you first find out there was a contest?

A. I believe I received notice through the mail at Sanborn, Vail & Co. I am not positive about that, but I think that is the way I got notice.

Q. After you received such notice, what did you do?

A. Went to Oregon City.

Q. And then what took place then?

A. Well, whatever was taken up and done there, as I remember it, it was incomplete, the whole matter, at night.

Q. Did you ever attempt to commute?

A. I did not.

Q. Was there any talk had between you and anyone else as to commutation?

A. I don't think so.

Q. Wasn't some money tendered by Potter to commute?

A. No, sir.

Q. How is that?

A. No, sir.

Q. Did you ever get any money for your interest or right?

A. I can't call to mind that I ever received any money.

Q. Did you ever talk with anyone about relinquishing your interest in the claim?

A. I think that matter came up with Mr. Jones.

Q. Well, now, tell us about that matter.

A. But that is all I can—

Q. What conversation did you have with Mr. Jones about relinquishing? What did he say to you?

A. I couldn't say now.

Q. Who discussed it with you first?

A. I am not even positive about that; but it seems to me that Mr. Jones had something to say about that.

Q. How much did he offer you for your relinquishment?

Mr. Hall: That was not the question, your Honor. He says, "Did anything come up?"

Court: He already testified two or three times that he got nothing from his relinquishment.

Q. How did you expect to repay Mr. Wells, or Mr. Jones, or Mr. Potter for all these expenses, when you had given up your homestead without any fight?

A. If I saw fit to complete the homestead right and paid them $720. I suppose that would reimburse them.

Q. But how would you expect to reimburse them when you gave up your claim of right, and had no chance of getting the land?

A. I don't know that I expected to reimburse them at all if it didn't go through.

Q. Well, why was Mr. Jones putting up all his money for you in the first place?

A. I couldn't say; same as any other locater, I suppose, that was locating people on homesteads.

Q. How did you expect to reimburse him for the cabin he had built on the claim?

Court: I suppose the contract will show the conditions. Was Mr. Jones to loan you any money before you would give your mortgage of $720?

A. No; nothing.

Q. You were not to get any loan at all?

A. I never heard of any mortgage; don't know anything about anything of the kind. My claim never seemed to reach that state.

Court: You never gave a mortgage? Never got that far?

A. No, sir.

Q. Well, how were you to pay back to him this money, when you didn't perfect your claim? The contract provides the method of reimbursement after you got patent; but how were you to pay it back to him in case you didn't get patent?

A. I didn't consider that I was owing him anything.

Q. Didn't you consider you were owing him anything?

A. No.

CROSS EXAMINATION.

Questions by Mr. Hall:

Q. How long have you lived in the State of Oregon, Mr. Morse?

A. Forty years.

Q. And what state did you come from to the State of Oregon?

A. California.

Q. Is that your native state?

A. No, sir.

Q. What was your native state?

A. New York.

Q. And from what state did you enlist in the United States Army?

A. Illinois.

Q. How long did you serve in the Army?

A. Two years.

Q. One year?

A. Two years.

Q. And got an honorable discharge?

A. Yes, sir.

Q. Now, you came to Oregon, then, in about 1878?

A. September, 1878.

Q. And you have lived here since that time?

A. I have.

Q. And what part of California did you live in?

A. Oakland.

Q. Now, after you came to the State of Oregon, did you become familiar with the manner adopted by settlers as to residence and cultivation on homesteads?

A. Oh, somewhat, yes.

Q. And I will ask you whether or not you understood at the time that you filed on this claim that if a man visited his claim once in every six months,

or was not away from it for a period of six months at a time, that that was a compliance with the United States law regarding residence on homesteads?

A. That was my idea. I knew a good many that got claims in that way.

Q. And that patents were issued by the Government, and no questions raised?

A. Well, that I couldn't say. They seemed to acquire title.

Q. And what was your idea at that time as to whether or not a preference was given to soldiers, ex-Union soldiers, in regard to residence and cultivation?

A. I knew that the term of service in the Army was deducted from the five years' residence required.

Q. Yes. I will ask you whether or not that, so far as you know, was a general impression with the old soldiers: That they had a right to deduct from the time of their residence the time of their service in the Army?

A. Yes, sir.

Q. And when you took up this homestead over in the Siletz, did you believe that if you didn't remain away from it for a period of six months you would be complying with the law?

A. I did.

Q. And you believed that your term of service in the Army would be deducted, or would be credited to you on your residence on that land?

A. Yes.

Q. And when you filed on this homestead, did you have any idea of in any manner defrauding the Government?

A. How is that?

Q. I say, when you filed on this homestead, did you have any idea of defrauding the Government out of the land?

A. Not in the least.

Q. I will ask you, Mr. Morse, whether or not the contract that you testified to as having entered into in Mr. Wells' office, did not provide in the first place for a fee for Mr. Jones for selecting and preparing the papers and locating you on this land?

A. Yes.

Q. And whether or not Mr. Jones in that did not agree to build you a cabin or house upon the land?

A. Yes.

Q. And to make the necessary clearing and improvements on the land?

A. Yes.

Q. And to pay the necessary expenses, traveling expenses and filing fees?

A. Yes.

Q. That is, if requested to do so or required to do so?

A. Yes, sir.

Q. That you could either pay those fees yourself, or he would pay them?

A. Yes, sir.

Q. And in that contract, you agreed to comply with the laws of the United States in regard to residence on said homestead?

A. I did. And I tried to do so to the best of my ability, as I understood it.

Q. Now, wasn't it further agreed therein, that after final proof he would procure for you a loan upon the premises, in the sum of $720, to be secured by first mortgage on said claim, and that included the advancement to you of $200 in cash?

A. Yes, sir.

Q. Now, did you have any other arrangement or agreement with Mr. Jones, other than the one that you have referred to?

A. I did not.

Q. Was there any agreement or understanding between you and Mr. Jones, prior to the time of final proof, that you should convey the land to him?

A. Any arrangement with who? How was that again?

Q. Was there any agreement or arrangement between you and Mr. Jones, prior to the time of making final proof, that you would deed to him the land?

A. No, sir.

Q. Now, Mr. Morse, let me see if I cannot refresh your memory a little. You went over there to the land how many times?

A. Three times.

Q. Three times. Now, you went over first with Mr. Wells, didn't you?

A. Yes, sir. Quite a party; quite a large number.

Q. With a party?

A. Yes.

Q. Now, wasn't that for the purpose of making the selection of the land before filing, that you all went over for that purpose?

A. Yes.

Q. And that you did go over there, all of you, and look at the land, as required by law, before you went to Oregon City and filed on it?

A. No; I think I filed first.

Q. Eighteen years has gone by, Mr. Morse?

A. I know.

Q. And you might be mistaken, might you not?

A. I might be mistaken, but that is my impression.

Q. Yes. Do you remember the time of year?

A. I will tell you: I think this applies more to a party that went earlier than I did, probably.

Q. Do you know whether any parties had gone over previous to the time you went?

A. Why, I couldn't name the parties, no; but I have that in mind that there was a party, and probably Mr. Wells went on that trip, before the trip that I went, because, as I said before, if I had seen the claim before I filed, I never should have filed. I would not have thrown away my right on a thing like that.

Q. What is that? I didn't hear you. There is a little noise?

A. I say, if I had seen the land, the location, before I filed, I should have dropped the matter right there, because I would not have wasted my right on that property.

Q. Do you remember what time of year it was you went over there first, Mr. Morse? What month in the year?

A. Why, it seems to me it was along some time probably in June. I couldn't say as to the month.

Q. Would you say that it was not in April of 1901?

A. It might have been.

Q. Was it raining when you were over there?

A. No, I don't call to mind that it was raining; not the first time. It was the last time, in February, that I went when we had such a hard storm —sleet.

Q. When was that? In February, 1902?

A. Well, I don't remember the date. I remember the month—it was February. At that time Mr. Marble and I went alone.

Q. From Government's Exhibit No. 24, which is your homestead proof, it appears that you filed on this land at the Land Office on the 23rd day of April, 1901.

A. That was the filing date, was it?

Q. The time you filed; and in the spring of 1901 that you had a log cabin built, about 14x16, one window and one door. Now, about when was it, do you recall, that you went over the second time?

A. I couldn't say as to the dates. I know I had

in mind to visit the place once within the six months.

Q. Yes; but you did go over within the six months?

A. Yes. My daughter went with me and Mr. Marble. I think that is all there was in the party.

Q. Mr. Marble and your daughter?

A. Yes. Daughter and I slept in the cabin out there, or she slept and I sat up and kept fire.

Q. Did you sleep in the cabin on your claim that night?

A. Yes, sir.

Q. But the first time when you went your cabin was not completed?

A. Well, it was practically completed. The door and window wasn't in.

Q. But the next time that you went the door and window were in?

A. Yes; and the road had been cleared out to it. The first time we had to climb the brush and logs.

Q. No trail?

A. No trail. Oh, there was a kind of a trail, yes. You could not drive to it. We went over there with the rig, but we couldn't drive to it; but the second time we could.

Q. How far distant would you say your claim was from any wagon road?

A. Well, the party locating us told me he thought it was about nine miles.

Q. Well, didn't it seem that far to you by the time you got over it?

A. Yes, it did.

Q. And you say it was quite some distance removed from the other claims?

A. Yes, sir; Mr. Marble's claim and mine seemed to be the only two in that location—in that locality.

Q. And do you think there was a county road within nine miles of it?

A. I doubt it.

Q. How far was it, if you know, from the Siletz river?

A. The river is practically where you start from, you know.

Q. You went about nine miles back from the river?

A. The Siletz Reservation.

Q. Up in the mountains?

A. Yes.

Q. And when you visited there the second time about how much land was there cleared?

A. Well, the clearing was pretty small. There was an attempt at clearing and planting something.

Q. There was something planted there, was there?

A. Yes.

Q. Vegetables?

A. Well, there was something on that order, yes.

Q. Any fruit trees?

A. But that was the least part of the improvement.

Q. Well, how was the cabin—a substantial settler's cabin?

A. Yes.

Q. About such as there was at other cabins of other settlers in that neighborhood?

A. The cabin was all right.

Q. Then you visited the claim a third time, and do you remember when that was?

A. That was in February, the following February. We had a very hard trip. Mr. Marble went with me. He was living at Oregon City at that time, and I arranged, I think, with him, to meet me at Oregon City, and we took the train and went by way of Albany and across to Corvallis.

Q. Now, you didn't make your final proof until December, 1902, or about a year and a half after your filing; and hadn't you been there between February, 1902, and December, 1902?

A. I made three trips. That is all I can tell you.

Q. Well, the first was, you say, in the spring of 1901 some time, you made your filing in April, and your recollection is that you didn't go over there until after you had filed?

A. That is my impression, yes.

Q. And then within six months you went over there again?

A. Yes.

Q. That would be in the fall or winter, did you go the second trip?

A. I think it was in the fall. My daughter went with me, and Mr. Marble.

Q. But you visited the claim at least once in every six months?

A. I did.

Q. Then after you had completed about a year and a half's residence, you went to Oregon City to make your final proof?

A. Yes, sir; so it seems.

Q. And while you were making your proof do I understand that some contest or objection was made to it?

A. That is my recollection. I am satisfied that it never was completed, and it was just night, and my impression is that at that time we supposed we would have to return to Oregon City, and I never did. The matter was dropped, and I never heard anything more of it.

Q. Then you say your recollection is that you relinquished the claim?

A. Yes, sir.

Q. That is, relinquished all your right, title, and interest back to the Government of the United States?

A. Yes, sir.

Q. And was that with the consent of Mr. Jones?

A. How is that?

Q. Did Mr. Jones consent to that?

A. Well, I couldn't say whether Mr. Jones had anything to do with it or not.

Q. You don't remember?

A. No. I saw very little or Mr. Jones.

Q. You never received a final certificate or a patent?

A. No, sir.

REDIRECT EXAMINATION.

Q. Mr. Morse, you stated you received no money from Mr. Jones at any time. Now, I have some papers here which might indicate you are mistaken about that.

A. I am aware of that. I have no knowledge of it, though the papers state that I received $150; but I don't know where it was.

Q. You testified, did you, at the trial of the United States vs. Jones?

A. I did.

Q. Do you remember testifying that Mr. Jones made some sort of a proposition to you to relinquish, and that you told him that it would cost him $150, and that he gave you a check for it?

A. I am aware of that being on the records there, but I have no remembrance of it.

Q. I also asked you something about Mr. Potter offering some money to commute. You recall that, do you?

A. I don't call to mind that any word was ever said to me about commuting. I don't think it ever reached that stage.

Q. Why did you give up your entry without a fight? Why did you relinquish?

A. I never was satisfied from the first time I went down there to take any interest in it, any

more than as long as I had filed, I thought I would try and comply with the Government requirements as far as I was concerned.

Q. Well, in order to refresh your recollection, do you remember testifying at that former trial that you remembered of a tender of $240 and commissions and fees to commute the land, and that you remembered Mr. Potter was there with the money, and Mr. Potter tendered the money, because Mr. Jones told you that he thought that was the best way—to commute, and that he was figuring that that was the best way for you? Do you remember that?

A. I testified to that at that time?

Q. Yes.

A. I have no knowledge of it.

Q. And that your idea was that Mr. Jones' proposition to commute was the best way for him to get the land?

A. I have no remembrance of it at all.

Q. And that you didn't expect to pay back any of the sums of money offered for commutation fees?

A. No.

Excused.

George Rilea, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Your name is George Rilea?

A. Yes, sir.

Q. Where do you live, Mr. Rilea?

A. I live in Montavilla.

Q. Portland?

A. Yes.

Q. How long have you lived there?

A. In the neighborhood of 20 years, I guess.

Q. Continuously?

A. Pretty much.

Q. Have you lived any other place but in the City of Portland during the past 20 years?

A. I was down at the Home pretty near a year, down at Los Angeles.

Q. Where was that?

A. Down at Los Angeles in California.

Q. Oh, the Soldiers' Home in Los Angeles?

A. Yes.

Q. Did you ever live or make your home at Siletz? Did you ever have a home there?

A. Only about two weeks once.

Q. I mean, did you make it as your permanent home?

A. Well, my home was any place my hat was off. I was alone, you know.

Q. Did anyone talk to you about filing a claim, some homestead land in the Siletz?

A. Yes, sir.

Q. Who first spoke to you about it?

A. Mr. Wells, I think.

Q. John L. Wells?

A. Yes, sir.

Q. What did he tell you about it?

A. He said he thought he could put me on to something I could make a little money out of if I wanted to do it.

Q. He said he would put you next to something you could make a little money out of?

A. Yes.

Q. Did he tell you how you were going to make your money?

A. No. Any more than to take up this claim.

Q. And what were you to do with the claim?

A. What did I do with it?

Q. What were you to do with it?

A. He didn't say what for me to do with it.

Q. How were you going to make the money out of it? That is what I mean?

A. Well, I suppose—I don't know what he thought.

Q. Well, what did he tell you?

A. Well, he said that he thought I could make some money by taking up the claim.

Q. Did he tell you who was going to put up the money?

A. No. He told me that Mr. Jones would give me a loan on the place of $200.

Q. Mr. Jones. And then after that did you sign any contract or instrument or paper of any kind?

A. Yes, sir.

Q. Where did you sign it?

A. I don't remember when I signed it?

Q. Where? In whose office?

A. Mr. Jones' office, or in Potter's office.

Q. Mr. Jones' or Mr. Potter's office?

A. Yes.

Q. After you signed it what did you do then? Where did you go with reference to this entry?

A. Why, he gave me the loan of $200.

Q. Did he give you the loan right away of $200?

A. Yes, sir.

Q. Before you filed, or did you file first?

A. I filed before that.

Q. Did you file before you went down to see the land? Did you go to Oregon City first? That was the next thing you did, was it?

A. Yes, I went to Oregon City first, I think.

Q. Who went to Oregon City with you?

A. Mr. Potter, I think.

Q. Who paid your expenses to Oregon City?

A. Potter done it, I think.

Q. Who gave you the description of the land upon which to file?

A. I don't know whether it was him or Mr. Jones.

Q. Did you know what sort of land you were going to get?

A. I knowed the number.

Q. How?

A. I knowed the number of the land.

Q. Well, I mean, did you see the land before, or did you know what sort of land it was going to be?

A. Yes, I think we had been down there once before that, before I filed.

Q. And after you went down there, what took place when you got there?

A. We went down as far as Canoe Landing, and some of them went down pretty near to my claim; didn't get quite there. It was so bad we couldn't get.

Q. How many visits did you make down there?

A. Made three, I think.

Q. How long did you stay each time?

A. Oh, sometimes didn't stay very long; only a couple of nights maybe; and one time I went down—

Q. Who paid for all your expenses while you were gone down there?

A. Why, Mr. Jones, I think, did. I don't know.

Q. Mr. Jones?

A. I think so.

Q. And after you made the third visit, did you go to Mr. Jones' office and make a mortgage?

Objected to as leading and suggestive.

A. Yes, sir. Yes, I went to Potter's office, or his—I don't know which it was—and made the mortgage.

Q. What did you do when you got to Potter's office? What took place there?

A. Why, I made out the mortgage.

Q. Was any money given you?

A. Given me $200.

Q. Who gave you $200?

A. Mr. Jones gave me a check for $200.

Q. What did he give you the $200 for?

A. Why, it was a loan.

Q. Did you expect to pay it back?

A. Yes, sir. I expected to pay it back if I could. If I couldn't why, I was going—

Q. If you couldn't what?

A. If I couldn't pay it, I was going to sell the land and pay it that way.

Q. Sell the land?

A. Yes.

Q. Sell to whom?

A. Anybody.

Q. Did you make final proof?

A. Yes, I made final proof.

Q. Who went down with you when you made final proof?

A. Mr. Wells for one. I don't know who else.

Q. Who were your proof witnesses, do you remember?

A. Well, Mr. Wells was one and I don't remember the other one.

Q. Did you talk to Mr. Wells as to what you were going to swear to, or how you were going to answer the questions?

A. Yes.

Q. What did he say?

A. I told him I didn't know how I was going to get over that, what questions would be asked us, and he said—

Mr. Hall: Objected to.

A. It didn't amount to much, it is mere form anyhow. He says, "You have complied with the law."

Court: Who said that?

A. Mr. Wells. He told me, he says, "I will go on the stand first, and you can tell the same yarn I do."

Mr. Hall: We object to this class of testimony as against Mr. Jones, because it does not appear here that Mr. Wells was the agent for Mr. Jones, or any other person, for procuring the names of these prospective homesteaders.

Court: The court will overrule the objection. There has been some testimony that Mr. Wells was acting for Mr. Jones.

Mr. Hall: Save an exception to the ruling.

Q. And did you tell the same yarn he did?

A. I think I did.

Q. Why did you?

A. Because he told me to. He was a deacon of the church, and I didn't think he would tell me anything wrong.

Q. He was a deacon of the church?

A. I think so, at that time.

Court: Were you a member of the same church.

A. No, sir. I was not a member of any church then.

Q. You thought you could swear as hard as he could, did you?

Court: That is not fair.

A. Well, I supposed I would tell what he told me to, and I wouldn't be doing wrong.

Q. Is that your signature, Mr. Rilea?

A. Yes, sir, that is my signature.

Mr. Goldstein: I offer in evidence the testimony of the witness as proof claimant.

Mr. Hall: Same objection as heretofore made.

Objection overruled. Exception allowed.

Marked "Government's Exhibit 25."

And being the proof of claimant on the regular Government blank, duly subscribed and sworn to before the U. S. Land Officers.

Q. Where were you making your home at that time?

A. In Montavilla.

Q. Did you ever pay the money you got from Mr. Jones back to him?

A. No, sir.

Q. Why?

A. I never got a patent for the land.

Q. Why didn't you get patent?

A. I don't know that.

Q. Was there a contest filed?

A. Yes, there was a contest filed.

Q. Didn't you feel you owed him the money that you got from Mr. Jones?

Objected to as immaterial.

Court: He can state what the facts are about that.

A. Of course, I always thought I owed the money.

Q. Did he ever demand it of you?

A. No, sir.

Recess until 2 P. M.

December 5, 1918. 2 P. M.

George Rilea resumes the stand.

REDIRECT EXAMINATION CONTINUED.

Q. Now, Mr. Rilea, after you made your final proof, where did you go? What did you do? Do you remember? Did you get any money after you made your final proof?

A. Yes, when I got all the money I got.

Q. Did you get any money?

A. Yes.

Q. How much money did you get?

A. I got $200.

Q. And from whom did you get it?

A. I got it from Mr. Jones.

Q. What was said at the time you got your $200, do you remember?

A. Why, he went to work and wrote up this mortgage and give me a loan of $200.

Q. Was there anything said at that time about selling the land, do you remember?

A. About what?

Q. Was anything said at that time about selling the land, do you remember?

A. No. Yes, there was too.

Q. What was it?

A. Why, when he went to make out the mortgage Potter asked him how long he would make it out for, and he said six months; and I says, "Mr. Jones," I says, "you wouldn't call that a loan, would you?" I says, "I couldn't pay it in six months." "Well," he says, "how long time do you want on it?" I says, "at least a year, and that without any interest." He turned around to Potter and said, "Make it out that way." And Jones says to me then, he says, "You calculate to sell yours, do you?" I says, "I will if I can't pay for it any other way." "All right," he says, "all I want is my money."

Q. Did you have any income at all at that time? Did you have any money?

A. Not much. I was drawing a small pension.

Q. Was that all the income you had, that small pension?

A. Yes.

Q. Did you expect to get any money from the land; that is, the crops on the land, or anything of that kind?

A. I didn't know whether I would or not.

Q. Did you have any talk with Mr. Jones afterwards? Did you sell the land?

A. After I sold the land, yes.

Q. Whom did you sell your land to?

A. I sold it to Kola Neis.

Q. Were you interested with them?

A. No.

Q. Whom did you sell it to them through? Do

you remember what was the man's name whom you sold it through?

A. Montague. Him and me was in partners buying these quarter sections up, from the old soldiers.

Q. You and Montague were partners?

A. Yes.

Court: You sold your land to Neis?

A. Yes. Montague did. He done the selling, and I done the hunting up among the old soldiers, and buying, and divide equally, and he sold and got the money and skipped to China, and left me holding the sack.

Q. Did you have a talk with Mr. Jones after that, do you remember?

A. Yes. After they drawed up the mortgage he says to me, he says, "You are going to sell yours?" And I says, "I will if I can't pay for it."

Q. No, I mean, did you have a talk with Mr. Jones after you sold it through Montague, do you remember?

A. It seems to me like I did see him once or twice.

Q. Do you remember what he said?

A. Why, he said he thought I ought to give him the first chance at it when I went to sell it. That is all he said.

Q. What did he say about getting the first change to buy the land?

A. I don't remember. He just says, "I think you ought to give me the first chance."

Q. Do you remember what you answered him?

A. No, I don't.

Q. Did he appear to like the fact that you sold it to someone else?

A. No, I don't think he liked it very well.

EXAMINATION BY THE COURT.

Q. Do you remember what the consideration was when you sold your land to Kola Neis?

A. No. I didn't know. This Montague done the selling, you know.

Q. You don't know what you were to get out of it?

A. No. I was to get half of over what paid the mortgage.

Q. He was your selling agent, or he and you were working together?

A. Yes.

CROSS EXAMINATION.

Questions by Mr. Bowerman:

Q. I understood you to say you and Mr. Montague were sort of partners in selling a lot of claims?

A. Yes, we was. I had a written contract with him as partners.

Q. And you would go out and hunt up the claimants, and then he would do the selling, and you would divide the commission?

A. Yes.

Q. What commission were you to get on these other claims?

A. I was to get all we could get out of it, you

know. He was going to sell it and divide what would be above the mortgage and expenses.

Q. What were the claims selling for, do you know?

A. I think he got $1,300 or $1,400 a quarter for them, the nine that he sold.

Q. He sold nine?

A. Yes.

Q. They were all in around your claim there on the Siletz?

A. Yes.

Q. Did Kola Neis buy them all, do you know?

A. What?

Q. Did Mr. Neis buy all of them, or somebody else?

A. I think so. I think he bought the whole nine.

Q. Well, now, did this man Montague get away with the proceeds of your claim as well as the commissions?

A. Yes, he took that and went to China.

Q. Took your commissions as well as the price of your claim?

A. He took the whole thing and went to China with it.

Q. Whereabouts did you enlist from? What state were you living in when you enlisted in the Civil War?

A. Illinois.

Q. Illinois?

A. Yes, sir.

Q. When you came back, where did you live after that?

A. I lived in Illinois for a good many years until I came out here.

Q. Did you come out from Illinois to Oregon?

A. I came out to Oregon about 22 years ago, I think.

Q. Did you come from Illinois directly here?

A. Yes, sir.

Q. You have been here about 22 years?

A. I think so, in this state. I stopped up at Lebanon, Linn County, a while. I have been down here about 20 years in Portland.

Q. Now, you knew before you ever saw Jones or Potter or Wells, or any of those fellows, you had your own ideas of what the homestead law was, didn't you?

A. Why, I thought I did.

Q. And you understood that as a veteran of the Civil War you would have certain rights to a homestead, didn't you?

A. I think so.

Q. Just what were your ideas about that, Mr. Rilea?

A. How?

Q. Just what information did you have before you met Mr. Jones or Potter or any of those people?

A. Why I read the law when it was passed. I think the law read this way: That old soldiers should have all their time they served in the Army

taken out of their five years on the land; and where a man was discharged on account of wounds, or disability wounds, the full time should be counted.

Q. The full time of his enlistment?

A. Yes. And my full term was six years.

Q. How is that?

A. My full term was six years. But the bill said, I think, that the settlement must be at least one year on the land.

Q. Was it your idea that if a man was not off his claim more than six months, he had complied with the law; if he was there once every six months?

A. I thought if a fellow was on there for at least a year—it said the settlement must be at least a year.

Q. Yes. But what about absences? Did you understand you had a right to go away and stay, as long as you were back once in six months?

A. Why, I understood a man had a right to go off and make something to live on, if he couldn't make it there, you know, and return; but he must be there once every six months. That is the way I understood it.

Q. How long had you entertained that opinion as to the homestead law?

A. Well, I always had it, and have it yet.

Q. How is that?

A. I always had that opinion, and have it yet.

Q. Now, in your direct examination you started to tell how long you were on your place.

A. Yes.

Q. And I don't think you finished it. I wish you would tell the jury just how much time you spent on your place.

A. Well, I was down there three times, and one time I went down I don't know how long we did stay the other two times, but one time I went down I took my rifle with me and concluded I would hunt awhile. Me and a man by the name of Smith, an old soldier, went down, and we stayed, I think, about two weeks. That is the longest time I was down. I had my gun hunting.

Q. Did you stay longer than one day on any other occasion?

A. Yes, I think I stayed two days once. I generally stayed longer than most of them did.

Q. Now, when you testified before the Oregon City Land Office, did you tell the people down there the truth about your residence?

A. I don't know whether I did or not.

Q. You don't know whether you did or not?

A. If Wells told the truth, I did too.

Q. Well, you know what the truth is, don't you? I say, you knew at the time what the truth was, didn't you?

A. I knowed I was stopping out here at Montavilla, but being by myself I concluded my residence was wherever my hat was off.

Q. There was a special Agent of the Land De-

partment there at the time your proof was given, wasn't there?

A. I think so.

Q. And he asked you such questions as he wanted to about your residence?

A. Yes.

Q. Did you tell him that you had stayed out there all the time?

A. I don't know whether I did or not.

Q. You don't know whether you did or not?

A. No, I couldn't tell you. I couldn't say.

Q. What is your best recollection about that, Mr. Rilea?

A. I don't think I ever told him I was there all the time. I had to go off—I was there all the time only when I had to go off and make a living. I think that is the way I answered his question, if I ain't mistaken.

Q. This proof paper says you were temporarily absent for the purpose of earning a living.

A. Yes. Well that is what I told him, I think.

Q. Yes, and was that the truth?

A. That was the truth, yes.

Q. Well, did Mr. Wells influence you into telling that, or did you just tell that because it was the truth?

A. I don't know whether he told me to tell that or not.

Q. It was the truth anyway, was it?

A. That was the truth, I know.

Q. Now, you made your proof, as I understand you, and Mr. Jones loaned you some money, and you gave him a mortgage?

A. Yes.

Q. He suggested that the note become due in six months and you said you wanted a year?

A. Yes.

Q. And he said to make it a year ?

A. Yes, he told Potter to make it a year.

Q. There wasn't any argument about that?

A. No, it was all right.

Q. What was your idea in asking for that extra six months?

A. Well, that would give me time to raise money maybe and pay it, or maybe I could make it out of the land or some way—I didn't know how—get the chance.

Q. Your idea was to either keep the land or sell it to anybody you could, and get the best you could out of it, wasn't it?

A. Yes, sir.

Q. You thought you had a perfect right to do that?

A. I wanted to keep the land if I could. Mr. Jones told me that he didn't care just so as he got his money. He says, "All I want is my money."

Q. All he wanted was his money?

A. Yes.

Q. You sold it, and he got the money, and that is all there was to it.

A. Yes.

Q. And this fellow swiped your money and went to China, and you didn't get what was coming to you?

A. I got two—

Q. I say, this fellow at Albany got away with your money?

A. Yes, he got away with that part of it.

EXAMINATION BY THE COURT.

Q. Well, did he sell other land on which he divided the profit with you?

A. He sold all that we bought, but he didn't divide.

Q. I mean, did he divide the property in any other way?

A. No. He sold it all in a bunch to Neis.

Q. And he never divided with you on any of it?

A. No. He skipped out and went to China.

CROSS EXAMINATION RESUMED.

Q. Mr. Rilea, when you went after this homestead down there, were you trying to beat the Government out of anything, or merely trying to comply with the law and better your condition?

A. I was just trying to get what I thought was my own, what actually belonged to me.

Q. You thought you were entitled to a homestead?

A. Yes, I think so.

Q. And did you comply with the law as you understood it to be?

A. I did, I think.

REDIRECT EXAMINATION RESUMED.

Q. Did you expect to make that your home?

A. Well, I didn't know but what I would.

Q. Did you expect to make that your home to the exclusion of your home in Montavilla?

A. I didn't know but what I would make it my home; didn't know I would.

Q. Did you expect to do that after you saw the kind of land it was?

A. Yes; after I seen the land I liked it better than I did before. There was a good place up there to hunt, and I am a great man to hunt.

Q. Did you understand that the law required you to live on the land, or merely visit the land?

A. I understood I was to be on it every six months, and I had a right to go off to make a living.

Q. Did anyone discuss with you as to whether or not you had to visit the land or live on the land?

A. No.

Q. Did you speak to Mr. Wells about it?

A. No, I didn't ask him about that.

RECROSS EXAMINATION.

Q. You were single in those days, Mr. Rilea, weren't you? I say, you were a single man?

A. Yes, sir.

Q. You had no family?

A. No, I had no family. My wife is dead.

Excused.

(Testimony of Witnesses for Plaintiff—Continued.)

G. C. Lawrence, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Mr. Lawrence, where do you live?

A. East Portland.

Q. How long have you lived in East Portland?

A. Since 1878.

Q. Since 1878?

A. Yes, sir.

Q. Have you lived there continuously?

A. Yes, sir.

Q. Have you made a home anywhere else but here in the City of Portland?

A. No, sir.

Q. And what does your family consist of?

A. Well, I have two married daughters.

Q. Where were you living in the year 1900?

A. East Portland.

Q. And what was your business at that time?

A. I was teaming at the time, contracting.

Q. Teamster?

A. Yes, sir.

Q. Are you a veteran of the Civil War?

A. Yes, sir.

Q. Were you one of the old soldiers who filed on the Siletz lands?

A. Yes, sir.

Mr. Hall: Same objection to this testimony, your Honor.

Objection overruled. Exception allowed.

Q. Who induced you, if anyone, to file on this land?

A. John L. Wells.

Q. John L. Wells?

A. Yes.

Q. Just tell the court and jury what he said to you on the occasion, and what you did.

A. Well, as near as I remember, he spoke to me and wanted to know if I had used my rights, and I told him I had not.

Q. Speak up a little louder.

A. I say, he asked me if I had used my rights, and I told him I had not. He told me there was a proposition to come up where the Siletz Reservation was to be opened, and I could be located over there on a certain stipulated price. I believe that he told me that a man by the name of Jones would locate me over there, and I was to sign a contract to receive $200, or he would loan me $200; and I was to give a mortgage on the place for seven hundred, I think, and twenty, and he was to pay all expenses and all the work to be done on it.

Q. What, if anything, was said about having to live on the land?

A. Well, my understanding was that I was only to be on the land every six months.

Q. What about living on the land, making it your home?

A. There was nothing ever said to me in regards to that.

Q. Had you any intention of leaving your home in Portland?

Court: Did he sign a contract in this case? Have you the contract?

Mr. Goldstein: We have not. It was turned over to Jones.

Court: You claim he signed the contract?

Mr. Goldstein: Yes.

Q. You signed a contract, did you, with Mr. Jones?

A. Yes, sir.

Q. Where did you sign the contract, whose office?

A. I believe Mr. Wells.

Q. What was the next thing done after you signed the contract?

A. Well, if my memory serves right, I went to Oregon City and filed it, I think it was, if I remember right.

Q. You filed on the land, did you, before you visited it?

A. I think so.

Q. And who went down to Oregon City with you?

A. Well, there was quite a number, but I couldn't—but I couldn't say at the time.

Q. Who paid the expenses?

A. I don't know. I didn't.

Q. You didn't? Do you recall a man by the name of Potter?

A. I remember him, yes, sir.

Q. And where did you first meet him? Was it at Oregon City or at some subsequent time?

A. Well, I don't know whether I met him in Oregon City or not.

Q. Who furnished the description of the land upon which you filed?

A. Well, that I couldn't say.

Q. But it was given to you by someone, was it?

A. Yes, someone. I don't know what.

Q. You didn't know what the nature of the land was that you filed on, did you?

A. No, sir.

Q. How long after that did you visit the land?

A. Well, now, I am sure I don't know, but if my memory serves me right about six months, but I wouldn't say positive.

Q. Who asked you to go down there? Did anyone tell you to go, or did you go voluntarily?

A. Well, I was notified, I think. Mr. Wells notified me that there was a crowd going down a certain time.

Q. And who else went with you at that time that you went with Mr. Wells?

A. Well, there was quite a number.

Q. And who paid your expenses to Siletz?

A. I don't know.

Q. Did you pay it?

A. No, sir.

Q. What did you do the first time you got there?

A. The first time, I don't think, if I remember right, we didn't get there the first time. We only got to—I don't think we went the first time any further than Toledo, if I remember right.

Q. The first time you only got as far as Toledo?

A. I think so.

Q. What did you do after you got to Toledo?

A. We came back next morning.

Q. You came back next morning?

A. I think so, yes, sir.

Q. Didn't you go out to your claim at all?

A. Not the first time, I don't think, if I remember right. It has been quite a long time ago.

Q. Do you know the reason you didn't go out to your claim that time?

A. The streams were up so high certain places we couldn't cross.

Q. How long after that did you go the second time?

A. Well, I presume it was about six months.

Q. Who told you when to go down the second time?

A. Well, as near as my memory serves me, it was the same person, but I wouldn't say positive about that, who it was, whether it was Mr. Wells or

who; but anyway, I was notified by some of them that the crowd was going at a certain date.

Q. Did you take any of your personal belongings down with you when you went?

A. No, sir.

Q. You still maintained and continued your home in Portland?

A. Yes, sir.

Q. And what did you do when you got there the second time?

A. Why, I was taken out by a guide. There was quite a number of us went out to what was supposed to be our claim.

Q. Did you stay on your claim over night?

A. No, sir

Q. Where did you sleep that night?

A. Well, I suppose what they call headquarters

Q. Headquarters cabin?

A. I suppose so.

Q. You didn't stay on your claim at all?

A. No, sir.

Q. How long did you stay there the second time?

A. Oh, I guess—you mean over on the claim?

Q. Yes.

A. Oh, perhaps a couple or three hours. I don't know just exactly.

Q. Did they show you your lines?

A. One corner.

Q. Just one corner?

A. Yes, sir.

Q. Did they show you any other corners at all?

A. No. We walked out quite a ways to a place, we would come to a ravine, he says, "Your other corner"—I think it was the southeast corner, if I remember right, it was over that ravine. That was as far as we went.

Q. Was there any improvement on the land the second time?

A. There was a cabin.

Q. Was there any furnishings in the cabin?

A. No, sir.

Q. Any stove?

A. No, sir.

Q. One-room cabin, was it?

A. Yes, sir.

Q. Was there any cultivation?

A. Well, there was a clearing there.

Q. What was the nature of that clearing? Just slashed over?

A. Well, that I couldn't say, whether it was nature or whether it had been cleared; there was a little bit of it, I know, spaded up with something apparently in. I don't know whether it was turnips or radishes—something of that kind; some fruit trees.

Q. You had nothing to do with that, did you?

A. No, sir.

Q. Was there a floor in the cabin?

A. No, sir.

Q. When did you go the third time; how long after that?

A. I don't know if ever I went the third time.

Q. You don't recall?

A. I don't believe I did, but I wouldn't say positive.

Q. You don't know?

A. No.

Q. But in any event, who paid all your expenses on any of these trips?

A. I couldn't tell you. I never paid them.

Q. You never paid them?

A. No, sir.

Q. Did you ever do any cultivating or improving the land yourself?

A. No, sir.

Q. Did you at any time ever live on the land?

A. No, sir.

Q. And during all of this time, where was your home and your furnishings and your belongings?

A. In Portland.

Q. Did you at any time intend to live on the land?

A. No, not after I went and seen it.

Q. After you saw it. Now, how long after you made your last visit was there anything said about proving up on the claim, making final proof?

A. Yes, I was notified to make my final proof, but I don't know how long afterwards. I don't remember how long it was.

Q. Who asked you to prove up?

A. Well, now, I am sure I couldn't tell you that, whether I got it from Mr. Wells' office or where. I got most of my information from his office; but whether I got it through him or not I couldn't say.

Q. Who went with you to Oregon City to make final proof?

A. Well, I wouldn't be positive. I think maybe Wells was along. I wouldn't be positive. There was quite a number. Oh, beg pardon—to Oregon City to make final proof?

Q. To make final proof, yes.

A. Didn't I make that in Toledo?

Q. Or wherever you made it. Toledo, I guess. You made final proof at Toledo?

A. Yes.

Q. Who paid your expenses to the place to make final proof?

A. I couldn't tell you.

Q. Did you pay it?

A. No, sir.

Q. Is that your signature, Mr. Lawrence?

A. Yes, sir.

Mr. Goldstein: I offer in evidence the testimony of the claimant, Granville, Lawrence, for land in the Siletz Reservation.

Same objection. Objection overruled. Exception allowed.

Marked "Government's Exhibit 26."

Being testimony of claimant on the Government

form, and subscribed and sworn to before the U. S. Land Officers.

Q. Who paid the filing fees for filing the claim?

A. I couldn't tell you.

Q. Did you know who your proof witnesses were to be?

A. No, sir.

Q. Had you taken any proof witnesses out to your claim?

A. I did not.

Q. Do you know who your proof witnesses were?

A. No, I couldn't tell you at present who it was.

Q. Well, whoever they were, did they go out with you on the land?

A. They all went. Well, I don't know whether they all went or not. In fact, I don't know who the proof witnesses was now.

Q. Your homestead proof, Government's Exhibit 26, shows the proof witnesses were Daniel Clark and George F. Merrill. Did you know them before this time?

A. Well, now, I don't know. I think that Mr. Clark was, but I don't think Mr. Merrill went on the claim with me, if I remember right.

Q. Who arranged for making the final proof and publishing notice of intention?

A. That I couldn't say.

Q. Did you attend to it or arrange it?

A. No, sir.

Q. Did you know what questions were to be asked you when you made final proof?

A. I did not.

Q. Was anything said to you about the questions to be asked?

A. No; no, sir.

Q. Was anything said about the answers to be given? Did you discuss it over with anyone?

A. Well, I don't know as there was. I couldn't say positive about that. I don't think there was.

Q. Do you know where Roots, Oregon, is?

A. No.

Q. Were you ever there, so far as you know?

A. Not as far as I know.

Q. Your homestead proof shows you gave your postoffice address as Roots, Oregon. Do you recall how you happened to give that information?

A. I don't know as ever I give my address that way.

Q. After proof was made, what was next done? Did you see Mr. Wells or Mr. Jones after that about getting money?

A. I met Mr. Jones—I met Mr. Wells a number of times, but I met Mr. Jones once or twice after that.

Q. And what conversation or transaction did you two have concerning this?

A. He gave me $200.

Q. Who gave you $200.

A. Mr. Jones.

Q. Where did he give you the $200?

A. It was in East Portland.

Q. In whose office?

A. It was on the street.

Q. He gave it to you right on the street?

A. It wasn't exactly on the street. It was on a woodyard on East Water and Morrison.

Q. What did you give him for the $200 he paid you?

A. I haven't given him anything at present.

Q. Didn't you give him anything at all?

A. Not only a mortgage.

Q. And when did you sign that mortgage?

A. Well, I don't remember of ever signing it at all, but there is a mortgage with my signature to it. I don't remember when I signed it.

Q. What was said by him when he paid you the $200 as to what he was paying you the money for?

A. Well, it was something like this, as I understood it, that this was a loan, and I had the opportunity of redeeming it by either selling it, or do what I pleased with it; but I would raise this mortgage by paying, if I remember right, $720. That is what it would amount to. Of course, if I didn't, naturally he would foreclose the mortgage of course.

Q. If you didn't pay, he would foreclose the mortgage?

A. I presume so, yes, sir. That would be natural.

Q. Were you at that time financially able to pay off a $720 mortgage?

A. No, sir.

Q. Did you receive any income from any source whatsoever?

A. No, sir.

Q. Or what were the prospects of being able to pay off the mortgage?

A. The prospects was very small without I found somebody else that would raise it for me.

Q. Did you receive any final certificate?

A. No, sir.

Q. Was anything said as to who was to receive the final certificate, and how it was to be sent by the clerk?

A. I was never notified in any respect; never received anything at all.

Q. What became of your claim?

A. I guess it went back to the Government, I guess. I don't know.

Q. Do you know whether it was contested?

A. I think it was.

Q. Did you have any talk with Mr. Jones subsequent to that time?

A. I believe I met Mr. Jones once, and spoke about it.

Q. What did he say?

A. If I remember right, he asked me what I was going to do about it.

Q. He asked you what you were going to do about what?

A. About my claim was contested.

Q. And what did you tell him?

A. I told him I was going to do nothing.

Q. What did he say?

A. Well, that I don't remember. I don't remember what answer—don't recall that.

Q. Did you authorize him to represent you in any contest that might be instigated?

A. No, sir, I did not.

Q. How is that?

A. I did not.

Q. Did you authorize him to hire any counsel to represent you in the contest against you?

A. I authorized no one to.

Q. Did Mr. Jones at any time come to you with any statement that he wanted to you to sign?

A. I don't think so. I don't think so.

Q. When did you have this conversation with Mr. Jones about the contest, before or after final proof, do you remember?

A. Why, it was after, I guess.

Q. Did you ever pay back to Mr. Jones any of the money you received from him?

A. No, sir, I did not.

Q. Did he ever make any claim against you for the expenses he had incurred?

A. No, sir, he did not.

Q. What did you think you were getting $200 for?

A. Well, that is pretty hard to answer.

Q. How is that?

A. I say, I don't know just exactly how—really, I don't know just exactly what you would term that.

Q. Did you expect to live on the land and make it your home?

A. Not after I seen it.

Q. Did you think the matter was all closed after you got the $200?

A. Well, to a certain extent.

Q. Did you appear as proof witness for other soldier entrymen on the claims?

A. I think I did.

Q. At whose request, if any?

A. Potter's.

Q. Potter's?

A. Yes, sir.

Q. Were you on any of the claims of those entrymen to be able to testify?

A. Well, I might have been on some of them, but all of them I was not.

Q. And did you appear as a witness on some claims that you were not even on?

A. I think most likely I did.

Q. And at whose request was that?

A. That must have been through Potter's.

CROSS EXAMINATION.

Questions by Mr. Hall:

Q. Mr. Lawrence, you are a veteran of the Civil War, are you not?

A. Yes, sir.

Q. And from what state did you enlist?

A. Oregon.

Q. The State of Oregon?

A. Yes, sir.

Q. How long did you serve in the army?

A. A little less than two years.

Q. A little less than two years?

A. Yes, sir.

Q. What date did you enlist, if you recall?

A. I think it was in January, 1864, if I remember right.

Q. Well, I understood in your direct testimony that you came to Oregon in 1878.

A. Portland.

Q. Portland, yes; but you had lived in Oregon?

A. Since 1863.

Q. Since what time?

A. 1863.

Q. Since 1863?

A. Yes, sir.

Q. And you were living in Oregon, then, at the time when it wasn't settled up very much?

A. Well, after ten years—I came here in 1863, and then I left and went to Nevada; I didn't return back to Oregon then till 1874. That was ten years.

Q. Were you living in Nevada at the time when public lands were being settled there?

A. Yes, sir.

Q. Now, what was your knowledge or observation as to the manner of residence of men who were settling on homestead claims?

Mr. Goldstein: The Government objects to the question on the ground that it is incompetent, irrelevant and immaterial, and for the reason that it is not an issue as to what the witness' idea or knowledge of the land laws may be. The matter at issue is as to what the defendant, Willard N. Jones', intent was with respect to filing on these lands; not what this witness thought or had in mind.

Objection overruled. Government allowed an exception.

A. Well, at what time? While I was in Nevada?

Q. Well, at all times prior to the time that you went over to Siletz, while you were living in both the State of Nevada and the State of Oregon, they were being settled up by homesteaders?

A. Yes.

Q. At the time you lived there?

A. Yes, sir.

Q. Now, did you have any opportunity for knowing or seeing the way that homesteaders performed their residence?

A. Well, through hearsay. I never went through the mill myself.

Q. No; but I will ask you if it is not a fact that it was generally accepted by the people in the State of Oregon and the State of Nevada, that if a homesteader was not absent from his homestead for a period exceeding six months, he would be complying with the law?

A. That has always been my understanding for a number of years.

Q. And that was an idea formed prior to the time that you lived at Siletz?

A. Yes, sir.

Q. And when you filed over there, you honestly believed that if you visited that claim once in six months, and if the improvements—the house was built and some clearing done, you would have complied with the law of the United States?

A. That was my understanding, yes, sir.

Q. And in making that application for this homestead, you were not intending either to defraud the United States or to violate any of its laws?

A. No.

Q. And you thought you were pursuing the same means, the same manner of residence as other men had pursued, and which apparently had been approved by the Government officers and a patent issued?

A. Well, I have known of several that had gone through the same proceeding. I have known several that would go and visit, do so much work on it,

and visit it every six months—I have known several who have taken up homesteads on them grounds.

Q. Haven't you known of instances, where the man, after he had his cabin built, would watch the date very closely to see that he was not away six months, and then go out and stay over night in his cabin on his claim?

A. Well, I couldn't say to that, although I know they would go, say every six months or somewheres thereabouts.

Q. I will ask you whether or not, Mr. Lawrence, yourself and other ex-soldiers of the Civil War didn't believe that an old soldier had certain preferences made by the Government as to their residence on the land?

A. Well, my understanding was that their times that they served would be deducted from—be added on to their homestead.

Q. And that was your belief when you entered this homestead?

A. Yes, sir.

Q. And then you presented your final discharge to the register and receiver of the land office, didn't you, when you made your final proof?

A. Yes, I did.

Q. And you then claimed that that should be deducted from your time of residence?

A. Exactly.

Q. And that was allowed by them without question, was it not?

A. Yes, sir, it was.

Q. Now, let me refresh your memory a little, if I can, Mr. Lawrence: Isn't it a fact that before you went to file on the land, in company with Mr. Wells and some others, you went over to Toledo as being the first preliminary visit before filing? Do you recall whether that is true or not?

A. Well, I don't know. I couldn't say positive, as I say, whether I filed on it before I went over or not.

Q. You are not sure about that?

A. No, I am not sure.

Q. It has been 18 years ago?

A. Yes, it is fully that long.

Q. Do you know about what time of year it was you went over there first, Mr. Lawrence?

A. Well, no, I don't. I don't know whether it was in the fall or whether it was in the spring, the first trip I made. I know the streams was all up. Now, whether it was spring or fall I couldn't recall.

Q. I will ask you whether or not at the same time you didn't understand, and that it was the ruling of the department and the general custom, that a man had six months in which to establish his residence after filing?

A. Well, I think there was something like that; yes, sir.

Q. So isn't it probably a fact that you first went over with Mr. Wells, and you were not able to get

out to the claim owing to the swollen streams, and then you came back and filed, and within six months you went back for the purpose of what was known as establishing your residence, and at the second time that you went over, you found your cabin built?

A. I couldn't say whether—as I say, I don't know whether I had filed before, but it is more than likely I went over—I couldn't say whether I had filed before I went over the first trip there at Toledo or not.

Q. Well, were you ever over there prior to the time that you entered into this contract as a squatter on any of that land?

A. No.

Q. You never had gone over there before that?

A. No, sir, not before that.

Q. Now, your homestead proof is that you established your residence there in October, 1900. Now, isn't it probable that your first visit was some five or six or four or five months prior to that?

A. Well, that I couldn't say.

Q. You don't remember?

A. No, sir, I don't.

Q. Now, your proof shows, Mr. Lawrence, that you settled over there, or took a claim in October, 1900, but you didn't make your filing until June, 1902, or nearly two years thereafter?

A. Do you mean, to file on it?

Q. Well, I am looking this proof over. Your

testimony was that you settled over there in October, 1900—that is, you established your residence—and that you filed, made homestead entry No. 14235 at the Oregon City Land Office on the 18th day of June, 1902. Do you know why it was that your residence had preceded your filing for such a length of time as that?

A. No, I don't. I was under the impression that I filed before I went over the first time. I couldn't recall it.

Mr. Bowerman: Mr. Hall, I think the Government has his filing papers. Perhaps if you get those, it will clear that up.

Q. Your homestead application, which I now show you, Mr. Lawrence, shows that you filed—it is dated June 18, 1902.

A. I don't remember this at all.

Q. And your final proof is dated September 5, 1902, or about three months after the time. Then you must have been on the claim some considerable time previous, before you went to file.

A. Well, that I don't—I can't recall. It has been a long time ago, and I went through quite an ordeal of sickness since that, so there is lots of little things has slipped me.

Q. Now, did the officers of the land office raise any question about the legality of your proof for the reason that you showed that your filing had been made in June, 1902, and your offer of final proof in September, 1902?

A. No, sir, nothing that I know of.

Q. They made no objection to that?

A. No, sir.

Q. Now, before you filed, you entered into or signed a contract in Mr. Wells' office, didn't you, whereby you were to allow something like $185 for being located upon the land by Mr. Jones, and the preparing of papers, etc., and that he was to build a cabin, for which he was to have $100, and to clear a sufficient amount of land, cultivate it for you, and to advance not to exceed $60 for expenses if so desired by you, and after final proof and certificate issued, was to loan you $200, and then take a mortgage on the claim for $720? Wasn't that about the substance of the contract?

A. That was about the substance of it, yes.

Q. What is that?

A. Yes, sir.

Q. And then after you made your final proof, you kept your part of the contract by giving a mortgage, didn't you, to Mr. Jones?

A. Yes, sir.

Q. And on that he advanced you $200?

A. Yes, sir.

Q. And after that someone filed a contest against your claim?

A. Yes, sir.

Q. Now, you were not unwilling, were you, that Mr. Jones should look after that contest in order to protect what money he had in it?

A. I had no objection to anybody taking care of it, not in the least.

Q. What is that?

A. None, no, sir.

Q. No; you had no objection to that?

A. No.

Q. The only thing was, you didn't expect to put up any money yourself to fight the contest?

A. I wasn't able to look to it myself, and I didn't care what become of it.

Q. Did you afterwards relinquish the claim?

A. I did.

Q. Back to the Government?

A. Yes, sir.

Q. And under whose advice?

A. Well, I don't know. I was notified. I don't know how it was or when it was, but I was notified, I think by mail, if I remember right; and if I remember right, there was a commission or something—I know there was three or four men over here in the building—and I was asked this question if I wanted to retain it as a home; and I told them that I did not, because I could not live on it; and that was my relinquishment.

Q. Well, in what way was the Government interested in knowing you wanted to maintain it as a home after you had complied with the requirements of the Government?

A. Well, I couldn't recall this exactly, but it appears to me it was something in regards to this

relinquishment, or the man that was contesting, if I remember rightly; but I don't know who the parties was that was, or anything about it, who they was now that I come before.

Q. And Mr. Jones didn't make any objection that you know of to your filing the cancellation, did he?

A. I never had any talk with Mr. Jones after. That is the last time I remember speaking to him when he asked me in regards to what I was going to do about that man contesting it. That is the last time I remember of ever meeting Jones. I don't remember of any other conversation with him.

REDIRECT EXAMINATION.

Q. I understood you to answer counsel's question to the effect that you believed you complied with the laws of the United States when you filed this claim and made your final proof?

A. That was my understanding.

Q. Then, why didn't you fight the contest?

A. Because I wasn't able to. I didn't have the means.

Q. Well, didn't Jones offer to help you?

A. There was nothing said. He just simply asked me, if I remember right, asked me what I was going to do.

Q. What did you tell him?

A. I said I was going to do nothing.

Q. Why did you tell him you were going to do

nothing when you thought everything was all right?

Objected to as immaterial.

Mr. Goldstein: I think counsel brought that out. It was not proper cross examination in the first place.

Court: He may answer the question.

A. Give that question to me. I don't believe I catched you right.

Q. Why did you not tell Jones that you wanted to contest the case, fight the contest, oppose it?

A. I don't know. I wasn't much interested in it at the time.

Q. Why weren't you much interested in it?

A. For the simple reason I had seen the place. I was not going to live on it myself. It was up to him—he could do what he pleased with it.

Q. Why did you make final proof?

A. At that time I had made final proof to go on through with it, to make my obligations good all the way through.

Q. Make your obligations good with whom?

A. On the contract I had signed.

Q. At that time you knew you didn't intend to make it your home, didn't you?

A. I did.

Q. Did you have a contract with Mr. Jones at that time when you made your final proof?

A. No, I don't think I did. I had the contract. The contract was signed, yes.

Q. You felt under obligation to Mr. Jones to what extent?

A. Well, I had agreed to give him—I don't think that I had got the money from him; I think I was under obligations to him on the contract that I had signed, that he was to do so much work. Whether he had given me this money before that, I don't know, but I am under the impression I had it. I won't say.

Q. What obligations did you feel under toward Mr. Jones that compelled you to make final proof, after you knew that you didn't want the land to live on it?

A. Well, it was the same; if I proved up on it, I would never make my home there, but then I expected to dispose of it.

Q. To whom?

A. Well, to someone.

Q. And what obligation were you under to Mr. Jones?

A. Well, I was under obligations that I had signed a contract with him to locate me, and I had to make that some time, make that good for him for what he was out and advanced on the contract that I had signed.

Excused.

Daniel Clark, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Mr. Clark, where do you live? You are a little hard of hearing?

A. I have not heard anything in the court room yet. When you talk, I can't hear what you say.

Q. How long have you lived in Oregon?

A. Since 1886, spring of 1886.

Q. Where do you live now?

A. 9518 57th Avenue, 96th St.

Q. In the City of Portland?

A. Inside the city.

Q. How long have you lived here in the City of Portland?

A. I have lived here all the time, with the exception of a few months about 28 or 29 years ago, I was in 'Frisco; and I have lived here all the time up till August, 1916; I lost my wife, and then I took a visit to California.

Q. Where were you living in 1900, 18 years ago?

A. Well, I don't know. I have lived a great many places in the city.

Q. Well, it was in the City of Portland, was it?

A. Yes, sir, it was.

Q. Whom were you living with? What did your family consist of at that time?

A. Well, I was—I don't mind when it was, but twice I have lived with sons. One time, about the time that I got acquainted with Mr. Wells and Jones, I think, I was living on a street next to

Russell, lower Albina, and I forget the name of the street and the number.

Same objection. Objection overruled. Exception allowed.

Q. Are you a veteran of the Civil War?

A. Yes, sir.

Q. Did you file on a homestead on the Siletz Reservation?

A. Yes, sir.

Q. Who first talked with you about that?

A. Mr. Wells.

Q. J. L. Wells?

A. Yes, sir.

Q. What did he say to you?

A. Well, he told me about the proposition, that we could go there and file on certain conditions.

Q. What did he tell you about the proposition? What did he say the proposition was?

A. Well, he showed it to me in an agreement, I believe.

Q. Whom did he say he was appearing for, representing?

A. Well, he represented a man by the name of Jones.

Q. And what did he say you were to do?

A. I don't mind what it said in the agreement. They was to do so and so.

Q. Were you to get any money out of it?

A. I got $100.

Q. You got $100?

Court: Is it the same agreement?

Mr. Goldstein: Same form of contract.

Q. You got $100 from whom?

A. I got it from Mr. Jones.

Q. When did you get it?

A. Well, I think it was after we had that suit, I think it was.

Q. After the contest, you mean?

A. Yes, after the suit that we had—that Mr. Jones had with the Government. I think it was after that. I won't be positive.

Q. Well, we will get at it this way: Did you sign this agreement that Mr. Wells brought to you? Did you sign the agreement or contract?

A. I signed a contract in Mr. Wells' office.

Q. What did you do after that? Did you file on the land?

A. We filed, yes.

Q. Or did you visit the land first? What did you do?

A. I think we visited the land first, but I wouldn't be sure.

Q. You are not sure about that?

A. I have forgotten.

Q. Who told you when to go to visit the land?

A. I think Mr. Wells was with us.

Q. Who else went?

A. I forget who all went that time. I cannot remember the men's names.

Q. Were there other soldiers along?

A. Sir?

Q. Were there other old soldiers along?

A. Oh, yes, sir; yes, there was always soldiers with us.

Q. What did you do when you got down to Siletz?

A. Well, I don't mind the first time. I think it was the first time—I won't be sure—there was one time when we went there we didn't get clean down, on account of the flood; and I don't mind whether that is the first or second trip. One time we only went to Canoe's Landing.

Q. One time you only went to Canoe Landing?

A. Yes.

Q. How many times did you go down there?

A. I think I went four times.

Q. Four times?

A. I think so.

Q. Did you ever sleep on your claim, or did you sleep elsewhere?

A. Well, I slept on the claim purporting to be my claim.

Q. Did you know whether it was or not?

A. They sent a guide with me—a guide.

Q. A guide. Was there any floor in the cabin?

A. No, sir.

Q. Did you sleep on the earth?

A. There was a bunk there, where some of the laboring men had been sleeping on.

Q. Who furnished all the expenses for these trips?

A. Why, I don't know.

Q. Did you?

A. We was furnished with a ticket. That is all I know.

Q. Did you furnish any money at all?

A. I don't think I did for traveling expenses.

Q. Who showed you your claim, do you remember?

A. I don't know who he was. He was a youngish man, I understood was their guide, or in their employ.

Q. How many times were you on your claim—once, twice, or three times? How many times?

A. Well, I don't know. I think I couldn't have been there more than twice; that is, I didn't get clean to it more than twice.

Q. After you saw the land, did you intend to make that your home, give up your home in Portland?

A. No, sir. I always considered myself not sufficiently able to live on a claim.

Q. How was your physical health? Were you able to?

A. I was able to get around in the city and do light work.

Q. But no farming or heavy work?

A. No. Haven't done anything for thirty-odd years.

Q. Were you financially able to pay off any mortgages?

A. No, sir.

Q. Did you have any income at all?

A. Nothing only what I could earn with my hands.

Q. And what did you do after your last visit to Siletz? Did you make final proof?

A. Yes.

Q. And who took you to make final proof? Who spoke to you about it?

A. I don't mind who notified us. I don't mind that.

Q. Did you talk with Mr. Jones before you made the proof?

A. I don't remember,

Q. Do you remember?

A. I can't remember whether I talked with him or not.

Q. Well, to refresh your recollection, Mr. Clark, you testified as a witness in 1905, didn't you?

A. I don't mind what year it was.

Q. Well, at the trial here?

A. Yes, sir.

Q. You were asked, "Did you have any talk with Jones about anything?" And you answered, "Well, I have talked; after I first met Jones, I talked to him several times about the claim business; but I don't recollect what we talked about." Do you remember that now?

A. Why, my recollection now would be that I never met Mr. Jones till about the time I was going the second time.

Q. Well, that would be about right?

A. Yes, I think so.

Q. And did you talk to him several times after that until you made your final proof?

A. Well, I might have, but I cannot say now. I wouldn't pretend to say how often, or whether I talked to him after that or not.

Q. And what would you talk to him about?

A. I don't recollect. I suppose if I talked to him, we talked in regards to the business; I don't know.

Q. What business did you have with him?

A. Just this. That is all.

Q. Just this?

A. Yes.

Q. Is this your signature?

A. I don't believe it is. I don't think I can write that good.

Q. You had the same trouble in 1905, too. You were not sure.

A. It looks pretty good for my handwrite.

Q. Well, that has been a long time ago?

A. Well, I know, I had better control of my pen then than I do now.

Q. You did make final proof, didn't you, Mr. Clark?

A. I think so. I thought I did.

Mr. Goldstein: Is there any question about the signature?

Mr. Hall: I don't know. I haven't any idea.

Mr. Goldstein: Is there any question about this signature, outside of the general objection to the admissibility of this proof?

Mr. Hall: No. We have objection to its competency and materiality.

Mr. Goldstein: We offer in evidence homestead proof of Daniel Clark, the witness.

Court: You want the same objection?

Mr. Hall: Yes. I assume my objection will go to all of this class of testimony.

Court: Yes.

Marked "Government's Exhibit 27."

Being homestead proof of Daniel Clark on regular Government form, subscribed and sworn to by Daniel Clark before the County Clerk of Lincoln County, Oregon.

Q. Did you pay any money on the filing of this land, or toward making final proof? Did you lay out any money yourself?

A. I don't recollect. It seems to me I did, but I won't be sure.

Q. Who paid the fees for making final proof?

A. I don't mind whether I did that or somebody else. I can't tell you now.

Q. When you made final proof, did you know what questions were going to be asked you?

A. Did I know?

Q. Yes.

A. I don't recollect whether I did or not.

Q. You don't remember, do you?

A. No, I don't remember anything about that, what the questions were.

Q. Do you remember whether you had any talk about the answers you were to make?

A. Sir?

Q. Do you remember whether you had any discussion with anyone about the answers you were to make?

A. Well, I don't.

Q. Well, to refresh your recollection, do you remember at the last trial you were asked, "Now, when you went up to Toledo to make final proof, didn't both Wells and Potter tell you how to make proof before you went in to make it?" And you answered then, "Well, I expect they did. I wouldn't be positive about it, but I expect they did. I suppose I had some instructions, but I have forgotten. It is pretty hard for me to remember that long back. I believe we was told how to answer some questions. Q. Did they tell you the same amount of work had been done on all the claims? A. Yes, sir. Q. And that you could answer all about the same way? A. The same way." Now, do you remember that now?

A. Well, if that is my testimony, that is as good as I can give you now, after these many years;

I can't remember. If that is my testimony, I don't deny it.

Q. After you made final proof, did you get any certificate from the Land Office?

A. No.

Q. Did you receive any papers at all?

A. No, I never got any.

Q. Did you see Mr. Jones after that time about getting money?

A. Yes, it was after that he came to me.

Q. And how long after you made your final proof did you talk with him about the money?

A. I don't recollect, but I thought it was after—I was thinking about that since I came here—I thought it was after that trial; but I won't be sure.

Q. In order to refresh your recollection—you don't remember much about this now, do you?

A. Not a great deal, no, sir, I can't.

Q. You were asked, "Now, after you made your final proof, did you give a mortgage to Jones? A. Yes, sir. Q. How soon after? A. I don't recollect how long that was. Q. A short time after? A. Well, I don't know whether it was right after, or whether there was some time elapsed. I don't remember."

Mr. Hall: If the court please, I object to this class of testimony, as not refreshing the mind of the witness, and it is the evident intention on the part of counsel to prejudice the jury in this case.

Mr. Goldstein: That is not the purpose at all,

if the court pleases. This is merely to refresh his recollection.

Court: If he has a memorandum of his own, he can refresh his recollection.

A. I never kept a memorandum of it.

Mr. Goldstein: He never kept a memorandum. I believe I am entitled to refresh his mind a little bit.

Court: That is getting that testimony before the jury, and I don't think you are entitled to that.

Q. Do you remember getting a check from Mr. Jones?

A. Yes, sir.

Q. Is this the check you received?

A. Well, I received a check from Mr. Jones.

Q. For how much?

A. $100; but—

Q. Do you recall whether that was the check?

A. Has that check been cashed?

Q. Did you cash it?

A. I cashed one, but I got another one that I never did cash.

Q. This is not cashed.

A. Well, that is the one that Mr. Heney took from me.

Q. I think that is the one?

A. I suppose so. He took the one that I had never got cashed. He said he wanted to use it as evidence, and I gave it to him.

Q. Well, this is the one? It was not used.

A. Possibly.

Q. Is this the check you received that you didn't use?

Court: What is the amount?

Mr. Goldstein: One hundred dollars.

A. I don't know whether that is the check. That was the amount.

Objected to as incompetent, irrelevant, and immaterial.

Court: What is the date?

Mr. Goldstein: Dated April 21, 1903.

Court: This was after the final proof, wasn't it?

Mr. Hall: Yes.

Mr. Goldstein: Yes.

A. Your Honor, would I be allowed to ask a question in regards to the check?

Court: Yes.

A. The check that I received from Mr. Jones was payable after the patent came, I thought.

Mr. Goldstein: The back will show that, the endorsement.

Court: I overrule the objection.

Exception allowed.

Marked "Government's Exhibit 28."

"No. 665. Portland, Oregon, April 21, 1903.

Merchants National Bank of Portland, Oregon:

Pay to W. N. Jones, or order, $100.00, One Hundred and 00/100 Dollars.

W. N. Jones."

Endorsed:

"Pay to Daniel Clark, or bearer, this check, when and only when you are furnished satisfactory proof that a patent to the NE¼ of SE¼ of Sec. 33, the N½ of SW¼, and the SE¼ of SW¼ of Sec. 34, T. 8 S., R. 10 W. of W. M., has been issued to Mr. Clark, and that said patent is at the Land Office at Oregon City.

W. N. JONES."

Mr. Goldstein: This check is dated Portland, Oregon, April 21, 1903. On Merchants National Bank of Portland. Signed W. N. Jones. Stamped "Good when properly endorsed" by the teller. On the back of the check an endorsement, "Pay to Daniel Clark or bearer, this check when and only when you are furnished satisfactory proof that a patent to the NE¼ of SE¼ of Sec. 33, N½ of SW¼ and SE¼ of SW¼ of Sec. 34, T. 8. S., R. 10 W. of W. M., has been issued to Mr. Clark, and that said patent is at the Land Office at Oregon City." Now, what did you receive this check for?

A. Well, it was supposed to be for the land. He come to me and wanted the land, offered me that on the land, for the land.

Q. And that was before patent was issued?

A. I guess it never was issued. I never could find out that it was.

Q. Did you receive another check in addition to this?

A. Yes, I got one, and that I got cashed?

Q. And how much was the other check for?

A. $100.

Q. And that you cashed?

A. Yes, sir.

Q. Did you ever reimburse or return any of the money you received from Mr. Jones?

A. No, sir.

Q. Did you also appear as a witness, proof witness, for other claimants, for other soldiers?

A. Sir?

Q. Did you also appear as a witness for other claimants, as a proof witness?

A. Why, I think I acted as a witness for a couple of the comrades at that time, but I don't remember who they were.

Q. You acted as witness for a couple of the comrades. Who asked you to act as their witness?

A. I don't mind that.

Q. You mean, you don't remember?

A. Some of them men, but I don't know which one.

Q. Had you been on their claims?

A. Had I?

Q. Yes.

A. Yes; if it was the two I supposed it was, I have been over them, passed over them.

Q. How soon, or how long before they made their proof did they ask you to be a witness?

A. I don't recollect.

Q. Was it very shortly before or at the time final proof was made?

A. I don't know.

Q. Did you ever live at a place called Roots, Oregon?

A. I don't think so.

Q. Do you know where it is?

A. I don't think so.

Q. Your final proof shows you gave that as your residence or post office address. Who spoke to you about doing that?

A. Well, I don't recollect whether that is the name that we had for it, but there was a post office on the Siletz River, and I think I passed that—

Q. Who discussed that with you?

A. I wouldn't be sure. I had to go down the river in a boat.

Q. Did you speak about that to anyone?

A. Did I?

Q. Did you have a discussion about claiming Roots as your post office address?

A. Don't talk so fast, please.

Q. Did you discuss with anyone about claiming Roots as the post office address?

A. I don't recollect that I did.

Q. Did you ever get any mail there?

A. No, sir.

Q. And where were you getting your mail regularly at that time?

A. Sir?

Q. Where were you getting your mail regularly at that time? Where?

A. I suppose that I was getting mail at two places. I think my home mail came down to Albina, and I was in business on Union Avenue in East Portland. I had mail there, too.

Q. Did you at any time get any instructions from Wells as to the residence you were claiming?

A. I don't understand you, please?

Q. Did you get any instructions from Wells as to the residence you were claiming? Do you remember that?

A. I don't.

Q. Did you ever pay Mr. Jones any of the money that you received from him?

A. Did I what?

Q. Did you ever pay him back any of the money?

A. No, sir. I have not seen Mr. Jones that I recollect of for a good many years.

Court: Have you the Land Office decisions? If I am correct, the Land Office has construed that act to conform to the previous ruling; that is to say, the soldier would get credit for the time he served in the army.

Mr. Goldstein: I think there is no question but that the Land Office did, and were authorized to give the soldiers allowance in other cases except this particular act. This act required three years' actual residence without any commutation what-

soever, although I think the Land Office Department did construe it, but wrongly.

Court: Well, it is very evident that the Land Office did misconstrue this act.

Mr. Goldstein: I think so.

Court: And that that misconstruction was the construction that they were acting upon at the time this land was entered.

Mr. Goldstein: There is no question about that.

Court: I want a decision of the Land Office to that effect.

Mr. Goldstein: I will find that.

Court: And furthermore, I understand they corrected it later; the Land Office reviewed that decision and reversed their action on that. I want that if you can get it.

CROSS EXAMINATION.

Questions by Mr. Hall:

Q. How long did you say you had lived in Oregon, Mr. Clark?

A. Since the spring of 1886.

Q. Where did you come from to Oregon?

A. Pennsylvania.

Q. That was your native state?

A. Yes, sir.

Q. And are you a veteran of the Civil War?

A. Yes, sir.

Q. You enlisted from Pennsylvania?

A. Yes, sir.

Q. And how long did you serve?

A. Three years.

Q. Had an honorable discharge?

A. Yes, sir.

Q. Then, when you came out to Oregon, what part of Oregon did you live in?

A. Always in Portland.

Q. All the time?

A. Yes.

Q. During the time that you were living in Oregon, did you have occasion to hear and know of about the manner in which homesteaders lived on their land when they went out in the timber and took up a homestead?

A. Yes, I have known something about that.

Q. I will ask you whether or not it was your belief and impression, as well as those of others in the community, that if a man visited his homestead every six months, and built a cabin thereon, and did some cultivation, that would be a compliance with the law, with the United States law?

A. I think I understood it that way.

Mr. Goldstein: The court understands that this goes in under the general objection we interposed heretofore, on the same grounds, and the further ground it is not proper cross examination, in view of the fact it is not applicable to Siletz land.

Court: Yes. You understand that I am admitting this as tending to show the good faith of the settler, what they understood about the matter.

A man cannot lie about a thing unless he knows the thing to be false, and states it to be true. I think it is proper cross examination. I overrule the objection.

Government allowed an exception.

Q. You say that was your understanding, Mr. Clark?

A. I always thought that a soldier was justified in coming and going every six months.

Q. Yes. And you believed that at the time you took up your Siletz claim?

A. I think so.

Q. That if you built or caused to be built a house, and made some improvements, and was not absent from the place to exceed six months, that you would be complying with the law?

A. Yes, sir.

Q. I will ask you whether or not it was not a belief of yours and other old soldiers, that the ex-soldiers of the Union Army were entitled to some preference in regard to the settlement on land.

A. Well, I alway knew that an old soldier was entitled to his term of enlistment out of his time that the land was allotted to him, five years. I always understood that the soldier was to have his three years, his time he served in the Army.

Q. And that if he had served three years in the Army, then he would only be required to have a two years' residence upon his homestead?

A. Yes.

Q. Now, when you put in your final proof on this homestead in Siletz, you exhibited to the Register and Receiver your discharge, didn't you?

A. Sir?

Q. You showed them your discharge, didn't you, when you made your final proof?

A. I did, yes.

Q. And they knew that you were taking out, deducting your service, the time of your service in making your proof?

A. Yes.

Q. And they allowed it?

A. Yes.

Q. And you had no idea but what that was perfectly legal and proper?

A. Well, I supposed so.

Q. Now, you first had a talk with Mr. Wells about this?

A. Yes.

Q. Then he gave you a contract, a form of contract to sign, didn't he?

A. Yes, sir.

Q. And in that contract Mr. Jones was to locate you over there, or to locate you on public lands, and get so much for a location fee, and to build a cabin or a house for you, and to clear the necessary amount of land, and to advance, if you required it, money for expenses, not to exceed, however, $60, and then after you had made your final

proof, to advance you a $200 loan in money, and take a mortgage on the place? Is that correct?

A. I didn't understand—I don't understand that the agreement included any money at all. I don't recollect it. Of course, I don't know now, but I don't think I understood that I was to have any money at all. I understand that that agreement with me was that he was to locate me, build my cabin and do the manual labor.

Mr. Hall: Have you got that Clark contract?

Mr. Goldstein: No.

A. I don't recollect any money. It may be there. I can't tell you about the agreement now. I don't know anything about it. The supposition with me was that Mr. Jones was going to satisfy the Government in regards to my manual labor.

Q. Building of the house and the clearing of the land?

A. Yes.

Q. And you agreed to do the residence part of it?

A. Yes.

Q. But there may have been an agreement that he was—you had the privilege of securing a loan; it was not absolutely necessary, but you could have a loan of $200, and then give a mortgage back to Mr. Jones for $720 after final proof?

A. Well, I don't mind anything about the agreement now.

Q. It has been a long time ago?

A. A long time ago. I don't pretend to know any thing about it. I might think some things, but I wouldn't know whether I was perfectly correct; and I don't state them things on my oath.

Q. You went over there before you filed, didn't you? You went over to select your land before you filed, before you filed in the Land Office?

A. Well, I suppose I did. I expect I did.

Q. Did you get out to the land that time?

A. Well, I don't know which time I failed, whether it was the first or second time. I don't mind that.

Q. Well, the first time there probably wouldn't be any cabin there?

A. No, I expect not. There was one time we went there when we failed on account of high water, but I don't mind now which trip that was on.

Q. There was a cabin built on it, wasn't there?

A. Yes, sir, there was a cabin on the claim that they showed me and told me was mine.

Q. What kind of a cabin was it?

A. Well, now, I forget whether mine was log or shakes. Some of them was log, I believe, and some was shakes, and I forget which mine was, whether it was log or shakes now.

Q. Well, how would your cabin compare with other cabins of homestead settlers in that country?

A. Well, I suppose they were all about the same size, but as I tell you, I think there were

two different constructions, log and shake. I wouldn't say now which one mine was.

Q. Did you visit that cabin more than once?

A. I don't think so. I wouldn't be sure whether I was there more than once or not. I had a guide with me, a man that took me there.

Q. Do you know who it was?

A. I have forgotten the name. Blue something —I know that. Blauvelt or something like that.

Q. Blauvelt?

A. I expect so. It was something near the name.

Q. Now, when Mr. Jones gave you the check for the $100, wasn't that in pursuance of his agreement to loan you $200 on your claim?

A. Well, sir, I don't know whether that was for that, or whether it was talk we had about valuation on land. I wouldn't say. I can't tell you now.

Q. You don't know whether that had anything to do with this transaction, do you mean?

A. I don't know which it was for.

Q. Well, what do you mean by valuation on land?

A. Well, you see there was a clause in his agreement that I could draw $200.

Q. Yes.

A. Well, now, I don't know whether that was for that, or whether it was intended to go on the land or not.

Q. Intending to buy the land?

A. Yes.

Q. You never sold the land to him, did you?

A. I don't know—

Q. What?

A. I never had any to sell.

Q. And he never gave you any money until after final proof?

A. Sir?

Q. You never got any money from him until after final proof, did you?

A. Well, I don't mind. I got $100, but I cannot tell you now when I did get it.

Q. Do you remember whether it was before or after final proof?

A. Oh, it was after final proof.

Q. Yes.

A. Yes.

Q. Then some time after that he gave you a check for another $100, the last one, the one you said Mr. Heney took away from you?

A. I don't mind whether he gave them to me separate, or whether he gave them both at once. I cannot tell you now.

Q. Now, you made your proof before Ira Wade, didn't you?

A. I made it down at Toledo.

Q. County Clerk of Lincoln County. Now, that shows that it was on the 5th day of September, 1902, as shown by Government's Exhibit 27. September 5, 1902, you made your final proof. Now,

what is the date of the check?

A. This is April 21, 1903.

Q. Yes. So a considerable time had elapsed?

A. Yes.

Q. After the final proof before Mr. Jones gave you this check; but you never had any arrangement to sell this land to Mr. Jones, did you?

A. I don't recollect whether I did or whether I didn't. There must have been some arrangement that this was to apply on the land. I don't mind.

Q. Well, this may have been the $200 loan that I spoke to you about as contained in your contract?

A. I don't know.

Q. Now, counsel has called your attention to some testimony that you gave on what he called a former trial. You remember that trial, don't you?

Q. You remember Mr. W. J. Burns?

A. Yes, sir.

A. Yes, sir.

Q. Do you remember T. B. Neuhausen?

A. Yes, sir.

Q. Mr. Francis J. Heney?

A. Yes, sir.

Q. What was Mr. Burns doing in connection with that trial?

Objected to as incompetent, irrelevant and immaterial.

Mr. Hall: I will make it competent in a minute.

A. I don't know.

Q. I will ask you whether or not he was apparently interested in it and had any interviews with you regarding your testimony?

A. He talked to me about it.

Objected to on the ground it is not cross examination, if it is material at all.

Objection overruled. Exception allowed.

Q. Now, I will ask you if it is not a fact, Mr. Clark, that in order to obtain the testimony from you that counsel read, you were threatened by Mr. Burns and by Mr. Neuhausen that if you didn't come through and testify in the manner that they wanted you to against Mr. Jones, you would be indicted and prosecuted?

Court: Just a moment. The testimony is too far away from that, and I think I will sustain the objection. It doesn't appear here that the Government got any testimony out of this man fraudulently.

Mr. Hall: I wouldn't have mentioned it, your Honor, except that counsel insisted on reading that testimony in the presence of the jury.

Court: He didn't read very much of it, and the court ruled it out.

Mr. Hall: I only was offering it, your Honor, for the purpose of showing that the testimony was not obtained in a fair and proper manner.

Court: Well, I think we are too far away from that case now. I will sustain the objection.

Mr. Hall: Very well, your Honor. I won't pursue it any further.

Q. Now, you never got a title to this claim, Mr. Clark, did you?

A. No, sir.

Q. And why not?

A. Well, I always understood that the title was never issued, or the patent. I don't mind who told me.

Q. Did you understand that the Government had changed its ruling regarding the allowance of the old soldiers' time in the three years' residence, or a deduction for it?

A. I know that Mr. Heney and me had something to say about that when I was on the witness stand, but I don't mind just what it was.

Q. No, that is not what I mean. I mean were you informed of any change in the rulings by the Land Office whereby your time as an old soldier would not be allowed?

A. I don't recollect.

Mr. Goldstein: Do you mean after he made his proofs?

Mr. Hall: After he made his proofs, yes.

Mr. Goldstein: Objected to as incompetent, irrelevant and immaterial as to what his ideas were.

Mr. Hall: Not what his ideas were, but what he was informed. He doesn't know. I won't pursue it any further.

Q. I will ask you whether or not you signed a relinquishment to your claim.

A. I went to the Land Office and relinquished that claim some time after.

Q. Back to the Government?

A. Yes, by their request. Some one told me it was the best thing for me to do; if I wanted to take another claim I had better relinquish, and I did.

Q. In order to preserve your right to take another homestead claim?

A. Yes.

Q. And Mr. Jones didn't get the claim?

A. I don't know.

Q. No. You relinquished it back to the Government?

A. Yes.

Q. Now, Mr. Clark, don't your remember of executing a mortgage to Mr. Jones for about $720?

A. No, I don't.

Q. You don't remember it?

A. No.

Q. You wouldn't say that you didn't do it?

A. I might have. I don't know anything about it now. Possibly I did. I don't know.

Q. And it may be that this $200, these two checks, was included in that mortgage?

A. I don't know.

REDIRECT EXAMINATION.

Q. Mr. Clark, you were questioned about whether

you felt you complied with the laws. Was anything said by anyone about the Register or Receiver—

A. I can't hear you.

Q. They asked you about whether you understood you were complying with the homestead laws. Was there anything said to you by anyone as to whether the Register or Receiver was a friend of the soldiers, or words to that effect?

A. Who?

Q. Was anything said about the Register or Receiver of the Land Office being friendly?

A. I don't think so. I don't recollect of it. I don't think so.

Q. You don't remember it now?

A. No.

Excused.

G. J. West, called as a witness on behalf of the Government, being first duly sworn, testified as follows.

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Mr. West, where do you live?

A. 10th and East Ankeny.

Q. Tenth and East Ankeny, City of Portland?

A. Yes.

Q. How long have you lived in the City of Portland, Mr. West?

A. Since 1894.

Q. Since 1894. Have you lived any place else than in the City of Portland since that time?

A. No, sir.

Q. And that has been your home continuously since 1894?

A. Yes, sir.

Q. What did your family consist of in 1900?

A. Four children and my wife.

Q. Living all together.

A. All together.

Q. What was your business at that time, Mr. West?

A. I wasn't in any business. I had retired.

Q. Did you serve in the Civil War?

A. Yes, sir.

Q. Did you make a filing upon some lands in the Siletz Reservation?

A. I did.

Q. Who first spoke to you about it?

A. Mr. Wells and Mr. Jones.

Q. Mr. Wells and Mr. Jones, both together?

A. Both together.

Q. Where and when did you first see them with reference to this?

A. On Grand avenue.

Q. In the City of Portland?

A. City of Portland.

Q. Who introduced you to Jones?

A. Mr. Wells introduced me to Mr. Jones.

Q. You mean John L. Wells?

A. John L. Wells.

Q. And the Mr. Jones you have reference to is Willard N. Jones, the defendant here?

A. Yes.

Q. You had known Mr. Wells before, had you?

A. Yes, sir.

Q. And after Mr. Wells introduced you to Mr. Jones, what was said at that time by either or both of them with reference to filing on this land?

Objected to as irrelevant and immaterial.

Objection overruled. Exception allowed.

A. I started over town, was going down Grand avenue. I was going down, and they was coming North on the opposite side of the street, and Mr. Wells beckoned me over to them, and introduced me to Mr. Jones. Mr. Wells said they was just going up to the Osborn Hotel to find an old soldier to take up a claim, and if I wanted to take it up I could do it. And I was not doing anything at the time, and says I, "Well, I will take it." So then Mr. Jones, I think, had the contract with him, and he just run over it, as we stood on the sidewalk, and asked me if I had my discharge. I told him "No." He said, "Well, then, you will have to go up and get your discharge, and I will go down to Mr. Wells' office." He says, **"We will have to make Oregon City this afternoon."** So I only had to go about six blocks, I think. And I went up and got my discharge, and then went down to Mr. Wells' office. And from there we went to Oregon City. Mr. Jones and me.

Q. Did you do all this in one day?

A. Done it all in the afternoon.

Q. All in one afternoon?

A. Yes, sir.

Q. Did you sign the contract the same afternoon you talked with them?

A. I didn't see the contract, only that Mr. Jones pulled it out of his pocket and read it; and I didn't sign no contract.

Q. Did you sign it before you went to Oregon City?

A. No, sir.

Q. What did you go to Oregon City for?

A. To file on this claim.

Q. What claim? Did you know what you were filing on?

A. Yes. Mr. Jones picked it out.

Q. Well, you went before seeing the land?

A. Before seeing the land, yes.

Q. Who gave you the description of the land as to where it was?

A. Mr. Jones picked it out.

Q. Who went to Oregon City?

A. Me and Mr. Jones.

Q. Just you and Mr. Jones?

A. Yes, sir.

Q. Who paid your fare to Oregon City?

A. Mr. Jones.

Q. And what happened when you got to Oregon City that same day?

A. Well, we went into the Land Office, and they opened the book there, and he looked it over, and he says, "This is the one." I don't know whether he spoke to me or the clerk, but he said, "This is the one"; and I filed on it.

Q. Did he say anything about whether you had to live on the land, to make it your home there?

A. No, sir, nothing.

Q. What did he say about that?

A. Nothing said about it.

Q. Did you expect that you had to live on the land?

A. No, I understood that I didn't; that is, from talking to the old soldiers. That is all.

Q. You understood that you didn't, eh?

A. I understood I didn't, or I wouldn't have took it up.

Q. You wouldn't have taken it up?

A. I wouldn't have gone up there at all. I wouldn't have taken up the claim.

Q. You didn't intend to change your home from Portland to Siletz, did you?

A. No, sir.

Q. Or take your children or wife there?

A. No, sir. They were in high school.

Q. What happened on the way to Oregon City? Did you get any money for filing?

A. Yes, I think I did.

Q. Who gave you the money?

A. Mr. Jones.

Q. What did he say you should do with the money?

A. Said that would pay for filing.

Q. You hadn't signed any contract yet, had you?

A. No, sir; never seen the contract.

Q. What did he say he expected you to do?

A. He didn't say anything about it. Didn't say anything about it.

Q. What did you expect you had to do to pay back to Mr. Jones for the money?

A. Well, I understood that they was to furnish the land, find the land, locate me, pay all the expenses, do all the business, and after I had proved up they would give me $200, or I could give them six —about that—and keep the land. That is the sum and substance.

Q. That you could give them what?

A. I could give them $600 and keep the land. I had to give them $600.

Q. You say they would give you $200?

Court: Have you that contract?

A. They would give me $200 after I—

Mr. Goldstein: Those contracts were asked for at the previous trial, and they were not produced, except those we already produced.

Mr. Hall: We have stipulated those, and they are all the same.

Court: This witness is presuming to testify to the contents of a written contract, and the written contract is not here. Is it lost?

Mr. Goldstein: It is not here. We haven't got it.

Q. Do you know what became of the contract?

A. I don't know whether it was a written contract, or whether it was typewritten.

Q. Well, what contract you had.

A. I don't know anything about it. Mr. Jones had it in his pocket, pulled it out and read it, and put it back. That is all I know about it.

Mr. Goldstein: I ask counsel to produce it.

Court: Did you have it at the former trial?

Mr. Goldstein: No, sir.

A. I don't remember ever signing the contract.

Mr. Hall: Mr. Jones says he will make due and diligent search, and if he can find it he will produce it; but it has been a long time ago.

Court: I think you better get those contracts here, because the witnesses are not stating what those contracts purport to state.

Mr. Hall: No, he is testifying, apparently, to a different contract than the others.

Q. Do you recall as to how much you were to pay to Mr. Jones after you proved up on the land, or how much was he to pay you?

A. He was to pay me $200.

Q. What was the $200 that he was to pay you for? What was that to cover?

A. How?

Q. What was that supposed to be that he paid you $200 for?

A. My services, I expect.

Q. Your services?

A. Yes.

Q. And what were you to pay him back in the way of consideration for getting the $200?

A. I was to pay him $600 if I kept the land after I proved up; and if I didn't want it, why, he was to give me $200 and keep it.

Q. If you didn't want it he would give you $200 to boot?

A. Yes, sir.

Q. And that is the facts in the case, is it?

A. Yes.

Q. Did you intend to keep it?

A. No, sir.

Q. Did you intend to sell it to him?

A. Not after I saw it, I didn't, after I had been up in the country.

Q. Prior to that time, before seeing it, you had?

A. No, no. I didn't know as I would keep it. I didn't expect to go up in that country.

Q. Did you at any time ever expect to keep it or make it a home?

A. No, sir.

Q. Now, how long after you filed on the land did you visit the land?

A. Well, I think this was in the spring I filed on it, and in the fall I was subject to their orders.

Q. Subject to whose orders?

A. Mr. Wells used to take us up.

Q. Who told you that he was to take you up?

A. Mr. Wells said that he would let me know when they were ready to go up, and he would notify me when to go up; and he didn't notify me until the fall.

Q. Whom was he doing this for, do you know?

A. Why, I suppose Mr. Jones.

Q. Who went down to the land with you, do you remember?

A. Mr. Jones, or Mr. Wells.

Q. Who else?

A. Oh, there were several of them.

Q. Soldiers?

A. Old soldiers.

Q. Who paid your expenses on the way down?

A. Mr. Wells.

Q. And when you got to Toledo—that is where you went to, was it the first time?

A. Yes, sir.

Q. What did you do?

A. Went to the hotel.

Q. Went to the hotel and stayed over night?

A. Stayed over night.

Q. At the hotel?

A. At the hotel.

Q. And what did you do the next day?

A. Went out to the Siletz.

Q. Did you go out on your claim?

A. Yes, went out to the claim.

Q. Who showed you your claim?

A. Mr. Wells told me that was my claim. It

was the first claim you come to—everybody saw my claim—the first claim you come to after you cross the foot-log, not very far from the mess-house.

Q. Was there any building on the land at that time?

A. Yes, sir, a cabin there, and been used.

Q. There was a cabin there?

A. Yes.

Q. Did you sleep in the cabin that night?

A. No, sir.

Q. Did you sleep in the cabin at all?

A. No, sir.

Q. At any time?

A. No, sir.

Q. How long did you stay out on your place that first time?

A. Well, one or two nights. I don't remember that.

Q. I mean, how many hours did you stay there at all during the day?

A. Oh, I just stepped in the cabin and looked around. Maybe an hour—something like that. That is all.

Q. So the extent of your residence the first time was an hour?

A. Yes, something like that.

Q. And then you went back home to Portland, did you, after that first visit?

A. No, we stayed over a day, stayed a couple of nights.

Q. At Toledo?

A. No, at the cabin.

Q. Oh, at the headquarters cabin?

A. Yes, sir.

Q. That was not on your claim, though, was it?

A. Right there within a quarter of a rod anyway.

Q. But was it on your claim?

A. No, no.

Q. So you didn't stay on your claim?

A. Yes. No, I didn't stop all night, I didn't.

Q. Who paid your expenses back to Portland?

A. Why, Mr. Wells.

Q. And how long after that did you go and visit the place the second time?

A. Well, it must have been in the spring.

Q. The last time was the fall?

A. The last time, I think, was in the fall. No, the first time was in the fall.

Q. Yes, the second time in the spring?

A. In the spring, I believe.

Q. Of the following year. Who asked you to go?

A. Mr. Wells notified me.

Q. Who provided the railroad tickets or fare?

A. Mr. Wells.

Q. What did you do when you got down there?

A. The same as we did before.

Q. The same as before?

A. Yes, sir.

Q. Did you sleep in your cabin or on your claim?

A. No, sir.

Q. How long did you stay on your claim the second time?

A. Oh, maybe an hour, something like that. It was right close to the mess-house, you know.

Q. About how long?

A. About an hour or two.

Q. About an hour or two. And that was the extent of your visit the second time?

A. Yes.

Q. You didn't sleep on your claim at all, then?

A. No, I don't think I did.

Q. Who paid your fare back?

A. Mr. Wells.

Q. Did you ever go there any more?

A. No, sir.

Q. And that was all you ever went on your place?

A. Yes, sir.

Q. Did you see any clearing done on your place?

A. Any what?

Q. Any clearing?

A. Oh, there was a little—the trees was scattering there—there was a little opening, and some grass, had grass there.

Q. Was it farm land or timber land?

A. I would call it timber land. There was just a little opening right there.

Q. Are you a farmer, or have you been a farmer at any time?

A. Yes.

Q. What were you doing in Portland? Oh, you stated you were retired.

A. I had retired. I had property there. That is all I done, was to attend to my own property.

Q. Were you in any financial position to pay off any mortgage of $600 or $700 then?

A. Yes, I could.

Q. How?

A. Yes, I could.

Q. Did you pay off the mortgage?

A. No, sir.

Q. What did you do after the second visit? Did you make any proofs? Did you make final proof?

A. Oh, yes, I made final proof later on.

Q. Up to the time of making final proof did you ever take your wife and children to visit the place or live on the place?

A. No, sir.

Q. Did you ever take any of your personal belongings?

A. No, sir.

Q. Is this your signature?

A. Yes.

Mr. Goldstein: I offer in evidence the testimony of the claimant on homestead proof, final proof.

Same objection. Objection overruled.

Exception allowed.

Marked "Government's Exhibit 29."

Government's Exhibit No. 29 and 30, being the testimony of claimants George West and Franklin Hummel, on Government Form 4-369, for Claims No. 13406 and 13166, duly subscribed and sworn to before the land officers of the United States at Oregon City, Oregon.

Q. Who went with you when you made your final proof?

A. Well, I went with a bunch more, a bunch of others, and Mr. Wells.

Q. You went with Mr. Wells?

A. Yes, sir.

Q. What, if anything, was said about the questions that would be asked you and the answers you should give?

A. I don't remember that.

Q. Who notified you to go and make final proof?

A. Mr. Wells.

Q. Was any discussion had as to who your proof witnesses were to be?

A. No, sir, not that I know of.

Q. Did you know that you had to have proof witnesses?

A. Well, yes, I knew I had to have them. I didn't know till the time come that they were witnesses, but I knew we had to have witnesses there.

Q. Did you know that there had to be a notice put in the papers for at least 30 days?

A. No, sir.

Q. Advertising the intention of yourself to make proof?

A. No, sir.

Q. And that the names of the witnesses had to be mentioned in that notice for the 30 days?

A. No, sir.

Q. Did anybody discuss with you as to who should be your witnesses?

A. No, sir.

Q. Did you take out anybody at all to show them your claim and the cultivation that was on it?

A. No, sir, I never took them out. They all saw them. There was nobody could go by to the mess camp, or go past it, where the claims all was, but what crossed right by the cabin.

Q. Who arranged for your proof witnesses?

A. How?

Q. Who arranged to get your proof witnesses? Who got them for you?

A. I think Mr. Wells.

Q. Do you know who your proof witnesses were?

A. No, sir.

Q. Was anything said as to what postoffice address you should claim? I notice on the proof you give your postoffice address as Siletz, Oregon. I understood you that you never changed your home from Portland.

A. I don't know anything about it.

Q. How does that appear? Was there any discussion had as to what should appear?

A. I wouldn't have put it in if I had put it in myself.

Q. If that question was asked you, your post-office address, would you have given it as Siletz, Oregon?

A. No.

Q. Did you also appear as proof witness for other claimants?

A. Not that I know of.

Q. Well, to refresh your recollection, I show you this paper. That is your signature, is it?

A. Why, at that time, that afternoon, there was quite a little confusion, and it was getting late, and I heard them say something about who was going to witness so and so, and who was going to witness for me. I don't know how they made it out, but we was all witnesses.

Q. At the time of making final proof, was this general discussion about witnesses?

A. Yes, at the time I proved up. We all had to change around and sign for each one.

Q. Sign for each other, who suggested that?

A. I don't know who suggested that.

Q. Was Mr. Wells present during all of this time?

A. He was there.

Q. Were you ever on the claim of William Teghtmeier?

A. Not that I know of. No, not that I know of.

Q. You appeared as a witness for him, did you?

A. I don't know. I don't remember.

Q. This is your testimony as a witness to the claim of Teghtmeier?

A. Well, I don't know anything about it. I was not on Teghtmeier's claim, or anybody else's claim, only Mr. Wells'. I did come on to that—they told me that was Mr. Wells' claim. That was the only thing that I know I was on, but my own, all the time I was up there.

Q. If you appeared as proof witness for William Teghtmeier, at whose suggestion would you do that?

A. Why, they would probably tell me to sign this and sign that, and I would sign it. Somebody had to sign them, and I had to have someone sign for me; but anybody could sign for me, because they all knew my claim. But I don't know of a claim up there excepting Mr. Wells'.

Q. Who was arranging for all of these witnesses? That is what I am trying to get at. Who attended to all that? Who was supervising this, attending to the whole thing?

A. Mr. Wells was there, and the land clerks, and making out the papers, quite a bunch was up there that afternoon. I don't know who was running this.

Q. Up to the time you made final proof, had you laid out any money of your own?

A. No, sir.

Q. And after you made final proof did you get your certificate?

A. No, sir.

Q. Did you see Mr. Jones or Mr. Wells after that, with reference to this matter?

A. No, sir. That is—

Q. Did you get any money from him?

A. How?

Q. Did you get any money from him?

A. No, sir. That is, I got money of him, but later on.

Q. Well, that is what I mean, later on?

A. Yes, I went over to Mr. Wells. I guess he sent for me, or Mr. Jones. I think they sent for me to come over and settle up, or something like that; and I got $200.

Q. Before that did you have any talk with Mr. Wells as to the order of introducing the testimony at the final proof, as to who should testify first or second?

A. No, I don't think so.

Q. Do you recall that?

A. I don't remember.

Q. Did you ever have a talk with Mr. Jones as to the amount of residence or cultivation on the land that was necessary?

A. No, sir. No, sir.

Q. Do you recall that?

A. I never had. He never said anything to me about the cost of buildings or improvements on the claims.

Q. Were you also asked to be a witness for Johnson? Do you recall that?

A. For whom?

Q. For Johnson.

A. No. No, not that I know of. If I witnessed it, I didn't know anything about it, whose it was or anything about it.

Q. And after the proof was made by you, you said you got some money out of him. Whom do you mean?

A. Why, Mr. Jones. I went over to his office over in the Chamber of Commerce, and settled up with him.

Q. What do you mean by settling up? Tell the court and jury what the extent of the settlement was.

A. Well, he got all the papers. I never got any papers, never got a certificate nor patent nor nothing. I went over to the office there, and that was the understanding that if I wanted the land I would have to pay him $600, or some such a matter, and if I didn't want it, why, he would give me $200. And he paid me $200, and very little talk about it. Mr. Potter was there. Mr. Jones didn't do anything but manage it and Potter made out the —yes, I think some papers there, maybe it was a mortgage or something. But Mr. Jones paid me the $200, and that was all there was to it.

Q. You figured that closed the matter, so far as you were concerned?

A. That was all there was with me. I was done with it.

Objected to as leading.

Q. Did you intend to pay off any mortgage?

A. No, sir.

Q. Well, why did you sign a mortgage then?

A. Well, I don't remember signing a mortgage. I did sign some papers there in Jones' office.

Q. What did you believe you signed?

A. How?

Q. What did you think you signed?

A. Well, something in regard to the claim, settling up.

Q. Selling it, you mean?

A. What?

Q. Do you mean selling it?

Objected to as leading and suggestive.

Mr. Goldstein: I think we ought to be entitled to get at the facts of the case. It is pretty hard. I didn't intend to lead him. It is some time ago. He did say it was a settlement of the matter. I am trying to find out what the settlement was. He doesn't think it was a mortgage, because he didn't have any intention of paying it off.

Q. What was the extent of the settlement?

Court: Do you know what you got the $200 for?

A. No, sir. Only that was the bargain, when I undertook to take up the claim. I was to get $200 when I proved up, or else I was to pay $600 and

keep it. I took the $200 and supposed I was done with it.

Court: You better show the witness one of those contracts.

A. I couldn't tell. I never had the contract in my hand only just while we stood on the sidewalk, and Mr. Jones read it over to me, and put it in his pocket, and that is the end of it.

Court: You heard it read?

A. Well, it was read pretty fast.

Court: When you got $200, did you suppose you were complying with the contract?

A. Yes. Yes, I thought I done my part of it, and that settled it.

Court: And then if you executed a mortgage thereafter, you supposed you were complying with that contract?

A. Yes, sir. I understood I had to give him a mortgage.

Court: And did you give him a mortgage?

A. Well, that I don't know. I know I signed some papers in Jones' office, whether it was a mortgage or what it was. Potter was there and done the writing.

Court: If you did give him a mortgage you understood you were complying with the contract?

A. Yes, sir.

Q. Would you remember the contract if I read it?

A. No.

Q. Did he read it to you? Did he read the contract to you at all while on the street?

A. Why, he just run over it, you know.

Court: He said he did.

A. I think I can remember part of it.

Court: He says Mr. Jones read the contract to him, and then put the contract in his pocket.

A. If you dwell on the contract, look it over, read it slow, I probably can remember something of it. The contract was something I heard through the other soldiers, and I knew about what—

Q. What I wanted to know was, after you got the $200, what was next done? Was anything further done between you and Mr. Jones?

A. Nothing at all.

Q. Was the matter all closed?

A. The matter was all closed. Jones paid me the $200, and that settled the whole thing. That was the bargain.

Court: Had you ever given him any deed?

A. Well, I signed something in Mr. Wells' office, and I think that was a blank deed. Mr. Wells—I was going down Grand Avenue—he called me in. He says, "I want you to sign something," and the deed was rolled up, it was three parts, and the bottom part there just was open, and the other part was folded up. I couldn't tell whether it was filled out, or whether the deed was filled out, or what it was. He said, "I want you to sign this." I signed it. I always had an idea that it was a blank deed.

Court: You don't know whether it was or not?

A. I don't know what it was. It was folded up. I couldn't see only the bottom part of the deed, and me and my wife signed the deed.

Q. Whatever it was, did you understand it was in full settlement of all claims and differences you had between you? Was it a closed matter after you got the $200?

A. Yes, sir.

Mr. Hall: Objected to as leading and suggestive.

Court: He has answered.

Mr. Hall: At this time I move to strike out the testimony of the witness in regard to the deed as being wholly incompetent and irrelevant.

Motion overruled. Exception allowed.

A. It looked about just, you might say, like that. This part was folded up, and down at the bottom where you see the signature, we signed it; and that was all there was about it. We was in a hurry; knew Mr. Wells and counselled with him. I wanted to do what was right. I wasn't acquainted with Mr. Jones. Mr. Potter I never had any dealings with at all, only he done the business for Mr. Jones while we was talking and settling up. He done the writing. Whatever Mr. Jones said, why, he done it, Mr. Potter. I don't know now if it was Mr. Potter or Mr. Jones gave me the check for $200, and I have never been up in the office since.

Q. Was there any discussion had between you

and Mr. Jones as to what you wanted to do about the matter?

A. In the first part of it?

Q. Yes.

A. What do you say?

Q. As to whether he looked to you any more, looked to you any more to pay off any claim, or he looked to the land? Do you know anything about that?

A. No, he never looked to me for anything; never was nothing said about it.

Q. And was that the entire transaction, so far as you know?

A. That settled it up so far as I know. He never asked me for anything, and I don't think he expected anything, and I didn't want it, and that was the bargain. He gave me $200, or I would pay him $600 for his trouble and expenses, and one thing and another; and that was the bargain in the first place; and I didn't take it, and he didn't look for any more money. He gave me the $200, and that settled it.

CROSS EXAMINATION.

Questions by Mr. Bowerman:

Q. What state did you enlist from, Mr. West?

A. From Wisconsin.

Q. After you returned from the Civil War, where did you live?

A. Green County, Wisconsin.

Q. That is where you lived when you came back from the war?

A. Yes. I was in Illinois.

Q. Illinois?

A. Illinois when I enlisted.

Q. After the war where did you live, since the war?

A. Well, then I went to Wisconsin.

Q. How long did you stay there?

A. Oh, about 25 years.

Q. 25?

A. I stayed there till I came out here. Well, right after the war I went down to St. Louis, and left there in 1868. Then I went to Monroe, Wisconsin, and stayed there until 1894, when I came out here. So I was there about 25 years, such a matter.

Q. You have lived around in public land states enough so you knew or thought you knew what the homestead rights of a soldier were, haven't you?

A. No, I never bothered myself about them. I nexer expected to take one up. I had what land I wanted right to home. I never bothered about it. I never expected to take up a homestead.

Q. It is not a question of what you expected, Mr. West. Did you entertain a notion that was common among all the veterans, that a soldier veteran of the Civil War had special rights under the homestead law?

A. Oh, I might have heard about it, but I never took any pains to investigate it. I might have heard

about it, that they had a right. Yes, I understood they had a right, all the veteran soldiers.

Q. All the veteran soldiers calculated they had a right different from common fellows, didn't they?

A. Yes.

Q. You understood that?

A. Yes, I understood that.

Q. Did you entertain an idea, like the other witnesses have testified to, that a visit to the homestead once in six months was sufficient?

A. No, I don't know that I did.

Q. What is that?

A. No, I don't know as I did.

Q. What was your information on that subject up to the time immediately prior to your meeting Jones?

A. To what?

Q. I say, what information did you feel that you had as to the requirements of the homestead law as to residence? Did you understand that a visit once in six months was sufficient?

A. No, I don't think it was. I never made any inquiries into it at all. I knew we had a right to take it up, and I never investigated.

Q. Did you understand that you were entitled to have your period of service deducted from the period of residence required?

A. No, I didn't know anything about it.

Q. Didn't know anything about that?

A. No.

Q. What business have you been engaged in out here, Mr. West?

A. Nothing. I have bought some property here, and had to attend to it, and that is all I have done. I am retired.

Q. Just attending to your own property?

A. Yes, just attending to my own property.

Q. Property outside of residence property, I take it?

A. Well, it is residence property and farm property I got here.

Q. Now, did you ever sign that contract with Mr. Jones?

A. Not that I know of. I might have signed something, but I don't know.

Q. I mean, when you first started in dealing with him.

A. No, not that I know of. I never signed a contract that I know of. I might have signed it in Wells' office. I might have signed something. I didn't know what it was at the time. I never read it over myself, and never had it in my hands that I know of.

Q. Did you understand that the contract provided for a location fee to be paid Mr. Jones?

A. No, I don't know anything about that.

Q. How is that?

A. I don't know anything about that.

Q. A location fee of $185?

A. No, sir, never heard of it mentioned at all.

Q. Did you understand that he was to build the cabin on the homestead, and cultivate the land, for a consideration of $100?

A. No, never heard said anything about it.

Q. How is that?

A. Never heard it talked about at all.

Q. And that he was to advance expense money, filing fees, such things as that, up to $60.

A. Never mentioned to me at all.

Q. What items made up that $609 that you have in your mind?

A. $600 I understood was for expenses, it might be cabin, it might be clearing, it might be something else—I didn't know that; paying the expenses up and down, boarding us, all such as that.

Q. You didn't know anything about the details?

A. No, sir.

Q. But altogether you understood it was $600?

A. Something in that neighborhood.

Q. Wasn't it $520?

A. Well, I had two or three—I heard several times that it was something in the neighborhood of $600.

Q. You just mentioned $600 in round numbers?

A. Yes, just let it go at that.

Q. It might be a little more or a little less?

A. I never expected to pay it anyway.

Q. You didn't mean exactly $600?

A. No.

Q. What was your understanding as to what

your status was after you made proof?

A. How?

Q. What was your understanding as to what your interest in that land was after you made proof? What did you understand your position was as to the land after you made proof? Was it your land or was it Jones' land?

A. After I had proved up, I made up my mind it belonged to Jones.

Q. You made up your mind it belonged to Jones?

A. Yes.

Q. Why?

A. Because I had filled my contract, and all I wanted him to do was give me $200, and that ended it, and he did; nothing said about it.

Q. You made up your mind it belonged to Jones because you didn't want it?

A. I didn't want it.

Q. That is what you concluded after you made proof?

A. Yes.

Q. If you had thought you wanted it, you could have given him your money, and it would have been yours?

A. Yes, if I really wanted it.

Q. You could have sold it to anybody else?

A. I never tried to sell it to anybody else.

Q. You could have? You had the right to?

A. I guess so. No, I expected to turn it over to Jones.

Q. You expected to turn it over to Jones?

A. Yes. If I wanted it, I would pay him just what I agreed to.

Q. You have done a good deal of real estate business, haven't you, Mr. West?

A. Not a great deal.

Q. You have given mortgages or taken mortgages, have you?

A. Yes, yes.

Q. You know what a mortgage is?

A. Oh, yes.

Q. You have been a party to several, haven't you?

A. Yes.

Q. You know a mortgage when you see it?

A. Yes.

Q. And you know the rights of the man that gives the mortgage in the land after he has mortgaged it?

A. Yes.

Q. You understand he has a right to pay the mortgage off and the land is his?

A. Yes.

Q. You understand that, don't you? You understood it then?

A. Yes.

Q. Well, now, here is an instrument, Mr. West. I wish you would look at it and tell the jury whether you ever saw this before.

A. Yes, I think this is all right. This is our signature all right.

Q. That is the signature of yourself and your wife, isn't it, to a mortgage.

A. I never seen it; didn't know what it was.

Q. What?

A. Never read it. We just signed our names there. That is about all. I didn't know what it was. I don't remember of signing a mortgage. That is our signatures all right.

Q. That is a mortgage for $730, isn't it?

A. That is the boy. How would he get his signature on there?

Q. Whose signature?

A. My son.

Q. Well, sir, I don't know. Who is the other man that signed it? Is that your son-in-law?

A. J. B. Easter, I think it is.

Q. That is your son-in-law?

A. Yes. Yes, sir.

Q. The family is pretty well represented on that instrument, isn't it?

A. Yes. I never knew that. That was all done unknowns to me. I don't know how they come. I know how Easter did, because he had a little office in the same building there, and I suppose they called him in to sign it. I don't know how Tom got his name on there.

Q. Your son witnesses as one witness and your son-in-law as the other witness?

A. Yes, sir.

Q. And you and your wife both signed this instrument?

A. We both signed it. That is our signatures.

Q. Giving a mortgage on your homestead for $730?

A. I never read it over. They folded the papers up so you couldn't see. Said just sign this, and that was the end of it.

Q. Where did you sign this?

A. I suppose I signed that down at Wells' office.

Q. Down at Wells' office?

A. Yes, on the East Side.

Q. And you think your son and your son-in-law signed it all folded up, and they didn't know what they were signing either?

A. I don't know anything about that.

Q. What business was Mr. Easter following those days?

A. I don't know—insurance and real estate; something like that.

Q. He was a school teacher, wasn't he?

A. He had taught school.

Q. He was a well educated gentleman?

A. Yes, sir.

Q. You are well educated?

A. Not very much; not too much.

Q. You have been quite successful in life, haven't you, Mr. West; been able to look after your own affairs?

A. Oh, yes.

Q. Are you in the habit of signing papers without knowing what they are?

A. Oh, yes, in a case like that, I just trusted to Mr. Wells and Mr. Jones, being that I knew them, and they would call me in and say, "Here, sign this," towards settling up of the claim; and that is the way it was done. I remember the time. I remember being called in there to Mr. Wells' office; and my wife was there standing on the sidewalk; and I signed it, and she come in and signed it. Then the witnesses must have been called in later, for I don't remember seeing them there, although Easter could be called in out of another room and signed that.

Mr. Bowerman: We offer that mortgage in evidence.

Marked "Defendant's Exhibit A."

Defendant's Exhibit A.

THIS INDENTURE, made this 27th day of May, 1902, between George West and Dilla G. West, husband and wife, parties of the first part, and W. N. Jones, party of the second part.

WITNESSETH: That the parties of the first part, for and in consideration of the sum of seven hundred thirty ($730) dollars, the receive whereof is hereby acknowledged, have bargained and sold, and do hereby convey unto the party of the second part, the following described real property, sit-

nated in the County of Lincoln, State of Oregon, to-wit:

N½ of the NW¼ of the NW¼; N½ of the NE¼ of the NW¼, the N½ of the NE¼, Sec. 22, and the NW¼ of the NW¼, Sec. 23, Township 9 S., Range 10 W. of the W. M.

To Have and to Hold the same to the party of the second part, his heirs and assigns forever. And the parties of the first part covenant that they are the owners in fee of said premises, having taken the same under the homestead laws of the United States and complied therewith and made final proof thereon, and will warrant and defend the same against the lawful claims of all persons.

Nevertheless, this conveyance is intended to be a mortgage upon the premises described to secure the payment of a certain promissory note of which the following is substantially a copy, to-wit:

"$730.00. Portland, Oregon, May 27, 1902.

7 months after date, without grace, I promise to pay to W. N. Jones, or order, at Portland, Oregon, Seven Hundred Thirty ($730) Dollars, in U. S. Gold Coin, for value received, with interest after-date in like coin, at the rate of 10 per cent per annum, until paid, interest payable semi-annually. And in case suit or action is instituted to collect this note, or any portion thereof, I promise to pay such additional sum as the Court may adjudge reasonable as attorney's fees in said suit or action.

(Sd.) George West."

And the payment of said note shall render void this conveyance; but in case default is made in the payment of the principal or interest in said note expressed, when either shall become due, then the whole sum, both the principal and interest accrued at the time default is made, shall become due and payable, and the party of the second part may foreclose this mortgage at any time thereafter. And the parties of the first part covenant to pay the sum and interest named in said note. And it is further expressly agreed between the parties to this mortgage, that if the party of the second part is compelled to foreclose this mortgage by reason of the non-payment of said note or any portion thereof, then in addition to the sum found due at the time of such foreclosure he shall be entitled to recover such sum as the Court may adjudge reasonable as attorney's fees in aid suit or action, in addition to costs and disbursements allowed by the Code of Civil Procedure, and the Court in making the decree of foreclosure is authorized to include in such decree the sum aforesaid, upon demand of plaintiff in such foreclosure suit.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set our hands and seals.

(Seal) GEORGE WEST.

(Seal) DILLA G. WEST.

Signed, sealed and delivered in the presence of us as witnesses:

Thomas H. West.

John B. Easter.

State of Oregon,
County of Multnomah—ss.

THIS CERTIFIES That on this 27th day of May, A. D., 1902, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named George West and Dilla G. West, known to me to be the identical persons described in and who executed the within instrument, and acknowledged to me that they executed the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal, the day and year last above written.

THAD S. POTTER,
Notarial Seal. Notary Public for Oregon.

U. S. District Court,
District of Oregon.
Filed Dec. 12, 1918.
G. H. Marsh, Clerk.

State of Oregon,
County of Lincoln—ss.

I hereby certify that the within instrument was received for record on the 16th day of August, 1902, and recorded on page 395 in Book 5, Record of Mortgages of said county.

IRA WADE,
Recorder of Conveyances.

Adjourned until 10 A. M.

December 8, 1918. 10 A. M.

G. J. West resumes the stand.

CROSS EXAMINATION CONTINUED.

Q. Mr. West, did you give a note at the time you signed that mortgage?

A. Not that I know of.

Q. Not that you know of. That is, you mean you have no recollection of giving it?

A. Yes, I have no recollection.

Q. How is that?

A. I don't recollect it.

Q. But you are certain that that mortgage was folded up when you signed it so that you didn't know what it was?

A. Well, I don't remember of seeing it was a mortgage. I must have signed it, because my signature is there.

Q. You say you must have signed it because that is your signature?

A. Yes, I must have signed it, but I don't remember knowing it was a mortgage.

Q. You said something about Mr. Wells having the instrument all folded up, you signed it without knowing what it was, you couldn't tell by looking at it.

A. Yes, it was only just folded back from where the signature was.

Q. All you could see was where you signed it?

A. Yes, that is all.

Q. Well, now, I wish you would look at this instrument, and state whether or not that is a prom-

issory note signed by yourself in favor of Mr. Jones on May 27, 1902.

A. Yes, that is my signature.

Q. That is your signature?

A. Yes, but I don't remember signing it.

Q. That was not folded up so you couldn't see what that was, was it?

A. No, no, I must have signed that. I don't remember.

Mr. Bowerman: We offer that in evidence.

Marked "Defendant's Exhibit B."

$730. Portland, Oregon, May 27, 1902.

Seven mos. after date, without grace, I promise to pay to W. N. Jones, or order, at Portland, Ore., Seven Hundred and Thirty Dollars, in U. S. Gold Coin, for value received, with interest after date in like coin, at the rate of 10 per cent per annum, until paid, interest payable semi-annually. And in case suit or action is instituted to collect this note or any portion thereof, I promise to pay such additional sum as the Court may adjudge reasonable as attorney's fees in said suit or action.

GEORGE WEST.

U. S. District Court,
District of Oregon.
Filed Dec. 12, 1918.
G. H. Marsh, Clerk.

Q. You have bought and sold a good deal of land, haven't you, Mr. West, real estate?

A. Oh, I have sold some.

Q. How many transactions have you had? In how many transactions have you sold land, roughly speaking?

A. Once anyway.

Q. What?

A. I have sold land once.

Q. Once?

A. Yes, sir.

Q. Just once?

A. Just once.

Q. All your other transactions have been where you have bought?

A. How?

Q. In your other real estate transactions you have been a buyer?

A. Yes, mostly.

Q. And you are still holding?

A. Yes.

Q. How many tracts of land do you have now?

A. I have got one tract of land.

Q. One tract of land?

A. Yes.

Q. You mean one farm?

A. Well, yes. I have got 40 acres out on the Base Line road.

Q. And how many houses do you own here in town?

A. Six.

Q. Six houses here in town? Well, now, when

you sold that piece of land you are talking about, did you give the man a note and mortgage?

A. Did I give him a note?

Q. Yes.

Court: Do you mean did he take a note?

Mr. Bowerman: No, he says he sold this to Jones, yet he gave him a note and mortgage when he sold it to him. I want to see whether that is his way of selling land.

A. Well, I understood that was the bargain, he should give me $200, or I would pay him $600 and keep it; and I just never bothered myself more about it. I turned it back to Jones.

Q. What I am trying to get at is this, Mr. West: It is a good while ago. I thought perhaps you were mistaken about it, and when I showed you these papers it might refresh your memory. Do you still insist you sold him the land, and at the same time gave him a note for $730 and a mortgage covering the land at the time you sold it to him?

A. Well, I don't remember giving him a note, but I signed everything he put to me.

Q. You signed it? That is your signature to the note?

A. Yes.

Q. And your signature to the mortgage?

A. I must have signed it all right. That was the understanding, that he was to locate me and do all the business, and pay all the expenses, and I was to have $200, or give him $600.

Q. How is that?

A. I was to have $200 if I didn't want the land, and he would take it, and I had to give him $600. I knew there was a mortgage somewhere. That is, that was the talk they had, to give a mortgage, but I don't remember.

Q. You say you knew there was a mortgage?

A. Did I give him a mortgage?

Q. Yes. You knew that, did you?

A. Why, I understood that they was giving a mortgage, they had to give him a mortgage, but I don't know when I done it. Done it when I proved up, I guess.

Q. Well, now, you have done enough real estate business, Mr. West, so you understand the rights of a man who has a piece of land and gives a mortgage on it, don't you?

A. Yes.

Q. You understand after you give a mortgage you have a right to sell your interest in the land to anybody you want to?

A. Well, I didn't calculate to sell it; didn't try to.

Q. It is not a question of what you calculated to do. I say you understood that was your right?

A. Oh, I suppose that it is customary.

Q. Yes, you understood that?

A. Well, some of them was doing that, but I didn't undertake to sell it. I just turned it back to Jones. That was the bargain.

Q. You knew that others were doing that?

A. Well, I heard of it, yes.

Q. You knew other old soldiers were selling it to other people?

A. Yes, I heard about it.

Q. You knew you had the same right they had?

A. Yes, but I didn't take it.

Q. You had the same right to sell to anybody you wanted to that they had?

A. Well, they was doing it. I didn't do it.

Q. What is that?

A. I didn't do it. I didn't know whether I had the right or not.

Q. You didn't know that?

A. No, I didn't know whether I had the right or not, not according to the bargain.

Q. How is that?

A. I didn't know I had a right according to the bargain with Mr. Jones.

Q. According to the bargain? What was that bargain?

A. Well, I tell you that he was to locate me on the land and pay all the expenses, and go according to his instructions, and when I proved up, why, he would give me $200, or keep the land; and he was to do all the business, and he done it, I guess.

Q. He was to give $200 and buy it?

A. I got $200.

Q. Supposing that you didn't take the $200, what right did you have?

A. How is that?

Q. I say, you had a right to give him $600 and keep the land, you said, didn't you, when you were on direct examination?

A. Well, I had—I understood if I kept the land, I would have to pay him $600, or about that.

Q. And you had that privilege, didn't you?

A. I suppose so.

Q. Well, didn't you testify that on direct examination, that that was your understanding, that you could give him $600 and keep the land, or take $200 and let him have it?

A. Yes.

Q. That was your bargain, you say?

A. Yes, that was the bargain.

Q. Well, now, I wish you would explain to the jury how you happened to take the $200 and give him a note and mortgage.

A. I might have given a note and mortgage, but I don't remember.

Q. You have no explanation of that?

A. No, sir.

Court: Did you get a patent to your land?

A. No, sir.

Court: Never did?

A. No, sir, never saw it.

REDIRECT EXAMINATION.

Q. Mr. West, when you settled up with Mr. Jones, as you have testified, did you enter into

any agreement with him whereby he would relieve you, or release you from any liability personally, in the event the mortgage was not paid?

A. No, sir, he never said anything to me about it.

Q. To refresh your recollection, I show you this paper, and ask you if that is not the paper that you received from him?

A. Nothing of that mentioned to me at all. I never saw it before.

Q. There has been some testimony in this case that William Teghtmeier filed also on one of these claims, and that you appeared a one of his proof witnesses.

Mr. Bowerman: If the court please, I didn't ask him anything in cross examination about Teghtmeier. It is not proper redirect.

Mr. Goldstein: It is merely to clear up the matter. I think I questioned him about it on direct, but didn't bring out clearly what the purpose of it was.

Mr. Bowerman: Then this is direct examination.

Mr. Goldstein: I believe I might be permitted to ask.

Court: Answer the question. We will see what he says.

Q. Did you know where Mr. Teghtmeier lived?

A. Yes, I did know where he lived; Ninth and Washington.

Q. In the City of Portland?

A. East Side, yes.

Q. All of the time that this entry was pending?

A. Well, yes, I think so.

Excused.

Franklin Hummel, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Mr. Hummel, where do you live?

A. East Portland.

Q. How long have you lived in East Portland?

A. It has been my home ever since 1872—1873; well, I went out in Washington County, but I come to Portland in 1872.

Q. Where was your home in 1900, 1901 and 1902?

A. Over in East Portland.

Q. What did your family consist of at the time?

A. I have got no family.

Q. You lived with some people, did you?

A. Just roomed around different places.

Q. What was your business at that time?

A. Manual labor.

Q. Did you file on one of the claims in the Siletz Reservation as a homestead entryman?

A. I have no recollection of filing, going up and filing.

Q. Did you have a talk with anyone about filing on one of those claims?

A. Wells.

Q. Do you mean John L. Wells?

A. Yes.

Q. Just tell the court and jury how he came to you, and what he said and what you said, concerning filing upon one of those claims.

Q. Why, he came to me, and he wanted to know if I had ever used my right. I told him I had not. He says, "There is a chance for you to make a couple of hundred dollars, if you go over there two or three times, and come out and prove up, and get $200."

Q. Did he say who was going to furnish the money, or how that was to be paid?

A. Mr. Jones.

Q. Then, what was the next thing done?

A. Next thing we went over there.

Q. Over where?

A. Over to Siletz; on the land, I supposed it was.

Q. Who went with you?

A. Edward C. Brigham, and Conner, and Longnecker, and myself; four of us in the party.

Q. Who paid the expenses?

A. Well, I never knew who did pay the expenses. I heard him on the stand—Conner; Conner was the man, I guess.

Q. Did you pay the expenses?

A. No. Mr. Jones—I guess Conner paid the expenses over there, the carfare.

Q. What did you do when you got down to Siletz? Where did you first go?

A. Went right to Canoe Landing.

Q. Canoe Landing?

A. Yes, sir.

Q. That was the general headquarters cabin, was it?

A. There was no cabin there then.

Q. What did you do there?

A. We stayed there over night, and went out—the four of us went up; Charley Mead took us up on our claims; showed us our claims.

Q. Who showed you your claims?

A. Mr. Mead.

Q. Did he show you the corners of the claim?

A. Didn't show me any corner. He took two of us, two to once, and he went off out on a trail through the brush, gone awhile, and he says, "There is your claim, and there is yours," to I and Brigham. He says, "There is your claim," and he pointed over on the other side, he says, "There is yourn, Brigham"; turned around and went back.

Q. Now, before you went down to the land, did you go to Jones' office, or enter into any contract or agreement?

A. Before I went down?

Q. Yes.

A. No.

Q. When was that done, if any?

A. That I went to Jones' office?

Q. Or did you sign a contract?

A. I don't know as I ever signed a contract. I signed something over there.

Q. Over where?

A. Over to Mr. Jones' office.

Q. And when was that?

A. Well, before we proved up, I reckon.

Q. Now, the first time you went on the land, did you stay on your claim at all over night?

A. The first time I went over there?

Q. Yes.

A. One night.

Mr. Bowerman: This is all subject to our objection. We wish to enter the same objection that we have been making to all of this character of testimony.

Court: Very well. The objection will be overruled.

Q. I mean, with reference to your claim, where did you sleep the time you went there the first time?

A. The first time?

Q. Yes.

A. Slept in an old shed, out on some hay.

Q. Was it on your claim?

A. No. It was right close to the creek.

Q. How long did you stay there the first time?

A. Stayed two nights.

Q. Did you stay any of those nights on your claim?

A. One night.

Q. Was there a cabin there?

A. There was a cabin there.

Q. Was there a floor there?

A. No floor.

Q. And then what did you do the next day?

A. Went up on Mr. Paquet's cabin, stayed there with him. He stayed with me, and I stayed with him the next night.

Q. Then you went back to Portland?

A. Came back here to Portland.

Q. How long after that did you go there the second time?

A. The second time I went there in January. I went over to work for Mr. Jones; there perhaps a month.

Q. Who asked you to work for Mr. Jones?

A. Mr. Wells.

Q. And what did he say about working for him?

A. He said to go over there, he would pay all expenses, and give me $1.00 a day.

Q. What work were you to do?

A. Why, cut brush and trails, general work that has to be done on a claim.

Q. What was the extent of the work you did?

A. Cut brush.

Q. How much brush did you cut?

A. Oh, I don't know. We cut trails around to different places, and around there.

Q. Well, with reference to your claim, when was the second time that you visited your claim?

A. When I went in there to work.

Q. Did you stay on your claim?

A. Not a minute.

Q. Not a minute?

A. No.

Q. Who asked you to go on your claim? Did anyone ask you to go?

A. Go up on the claim the second time?

Q. The second or third time, or any time after that?

A. Nobody asked me, for I was there working.

Q. Did you prove up on your claim?

A. I don't know. There was a lot of us went up together to prove up.

Q. Who spoke to you about proving up?

A. Mr. Wells.

Q. Who paid your expenses to Oregon City to prove up?

A. Mr. Wells.

Q. Who paid the filing fees?

A. That I don't know.

Q. Did you?

A. No.

Q. Did you know Brigham during his lifetime?

A. I knew him—knew him for 35 or 40 years.

Q. Do you know where he was living all of this time?

A. Where he was living?

Q. Yes.

A. Living right in East Portland.

Q. Do you know Anthony Gannon?

A. I knew him, yes, sir.

Q. Do you know where he was living during all of that time?

A. He lived out towards Lents.

Q. You mean Portland?

A. Portland, yes. In Portland. Lived out with his daughter and son-in-law.

Q. Do you know Richard Depue?

A. Yes. Yes, I knew him.

Q. During his lifetime?

A. No; just a short acquaintance.

Q. Well, I mean you knew him while he was alive?

A. Yes.

Q. Do you know where he was living during all of this time?

A. I think down towards the Columbia River.

Q. In Portland?

A. Yes, sir.

Q. Did you know Johnson?

A. No, I didn't know him.

Q. You didn't know him. Did you appear as a proof witness for other claimants, do you know?

A. When we went up to prove up?

Q. Yes.

A. Why, there was quite a bunch of us went up. Wells took us up.

Q. Did anyone say anything about appearing as a witness for somebody else?

A. No, not to my recollection.

Q. Did you ever intend to make your home down there to live there?

A. No, sir.

Q. Was that fact known to Mr. Wells?

A. Why, I guess he did know. He knew well enough that we would not go and live there.

Q. Did anyone tell you that you had to live there?

Mr. Hall: Objected to as leading and suggestive.

A. That I had to?

Q. Yes.

A. No. No, Mr. Wells told me that I just had to go over there two or three times, and come out and prove up. That is all.

Q. Is that your signature, Mr. Hummel? I guess you made a mark.

A. Somebody else wrote it. There is no mark there, is there?

Q. There is an "X".

A. Yes. Yes.

Mr. Goldstein: I offer in evidence testimony of claimant as entryman.

Objected to as irrelevant and immaterial. Objection overruled. Exception allowed.

Marked "Government's Exhibit 30."

Being the testimony of Frank Hummel as entryman on the regular form, and duly subscribed and sworn to by him.

Q. I notice by the homestead proof that you gave your postoffice address as Siletz, Oregon.

A. I never did.

Q. Did anyone talk with you about giving that address as Siletz, Oregon?

A. I think Wells did.

Q. What did he say about that?

A. Well, he says, "You want to give it in, give your postoffice address there," but I never did.

Q. Who was present when you made your final proof?

A. Well, there was quite a few. There was Edward C. Brigham and myself and Wells.

Q. Was Mr. Potter there?

A. I don't—I think he was there, but I never knew the man. They said that was Mr. Potter standing by the railing.

Q. Is this your mark on this, too?

A. Well—

Mr. Goldstein: I offer in evidence testimony of the witness as proof witness to the claim of Anthony Gannon, one of the nine entrymen in controversy.

Same objection. Objection overruled. Exception allowed.

Marked "Government's Exhibit 31."

Government's Exhibit 31, being the same as Government's Exhibit No. 3.

Q. Were you ever on Anthony Gannon's claim, do you remember?

A. No, sir.

Q. It appears here, Mr. Hummel, that you appeared as a proof witness for Anthony Gannon.

A. I never did, that I know of.

Q. If you did, who requested you to do that?

A. If I did?

Q. Yes.

A. Well, I never did, not that I know of.

Q. What was the general headquarters cabin known as, do you know?

A. Women's Relief Corps.

Q. Women's Relief Corps?

A. That is what they called it while I was there.

Q. Why did they give it that name?

Objected to as immaterial.

A. Well, there was quite a few women went over.

Mr. Hall: Objected to as wholly immaterial.

Q. What was done after you made final proof? What was the next thing done, Mr. Hummel?

A. After we made it?

Q. Yes. Where did you go? Whom did you see with respect to this entry after you went to Oregon City and proved up?

A. I didn't see anybody that I know of.

Q. Did you get any money for doing what you did?

A. Not a nickel.

Q. Not a nickel?

A. No.

Q. Did you get your patent for the claim?

A. I never got no patent. I never got nothing. No paper of no description.

Q. Why didn't you? Do you know what become of your claim?

A. No.

Q. After you did all what you did do, was there something said about getting paid for what you did?

Mr. Hall: Objected to as leading and suggestive.

A. Getting paid for what I done?

Q. Yes. About filing and proving up on your claim.

A. No, there was nothing said about getting paid for that.

Q. What was the understanding you had with Mr. Wells or Mr. Jones as to what you were to get after you proved up?

A. $200, with Mr. Wells.

Q. Well, did you see Mr. Wells about collecting it?

A. Yes, sir.

Q. What did he say?

A. He said he would attend to it, and he did collect it, but I never could get it from him. He

said that I was a spendthrift, and he would see me later on, and he finally turned it in to Mr. Kadderly, Al Kadderly, up on Seventh and Burnside—I was hanging around there quite a good deal; we was good friends; and he did turn it in, and I drew it as I needed it, I guess.

Q. Drew what?

A. Drew the money.

Q. From whom?

A. From Al Kadderly.

Q. How much?

A. Well, it should have been $200. I don't recollect whether it was $200 or not.

Q. Do you remember that you did get some money?

A. I got it through Al Kadderly.

Q. From Wells?

A. From Wells. He turned it in to Al Kadderly.

Q. And were you in a financial position to pay off any mortgage of $720?

A. No.

Q. Did you expect to live on the land at any time?

A. No, sir.

CROSS EXAMINATION.

Questions by Mr. Bowerman:

Q. Where had you been living before you came to Oregon in 1872, Mr. Hummel?

A. Back in New York State.

Q. You came from New York to Oregon?

A. Yes, sir.

Q. You have lived in Portland most of the time since you lived in Oregon?

A. Well, I have been back in the East, short trips back there, four or five of them; been up in Alaska, and made a trip up there and back.

Q. But most of your residence has been right here in Portland?

A. It has been my home.

Q. You are a member of one of the G. A. R. Posts here in Portland?

A. Do I belong to it?

Q. Yes.

A. I belong to Sumner Post, yes, sir.

Q. It is on the East Side, is it?

A. On the West Side; held here in the court house.

Q. Now, you have heard the members of the G. A. R. talk about the homestead rights of a veteran a good while before this matter came up, haven't you?

A. Heard them talk about it?

Q. Yes.

A. Oh, frequently, yes.

Q. That was a matter of frequent discussion in the camp meetings, and when you would meet you would talk about your homestead rights?

A. Yes, we ought to get our patent or land warrant.

Q. You thought you were entitled to 160 acres of land?

A. Yes.

Q. Let's see, some of the men that served in the Civil War got land warrants, didn't they, and some of them did not?

A. I don't know of anybody.

Q. What?

A. I don't know of anybody that ever got a land warrant.

Q. In the Civil War?

A. No.

Q. But you thought you were entitled to one?

A. Why, we thought we ought to have a land warrant the same as the old ones had before.

Q. Same as which?

A. The same as them old Mexican soldiers.

Q. You thought you were as much entitled to it a they were?

A. Yes.

Q. And you heard the other comrades talk about your homestead rights, too, and you talked about them?

A. Oh, not very much. I never took much interest in it, for I knew that I would never go on no land out in the brush and live alone.

Q. Well, was it your understanding that a soldier had to go out and stay all the time on the land,

or did you understand he could go there once in six months and comply with the law?

A. My understanding was that your time of service would be deducted out, and you had to live just the same as any other citizen on the land.

Q. Yes; and that if you were there every once in six months, that was sufficient? You understood that, didn't you?

A. Yes, sir.

Q. And that was your understanding before this matter ever came up?

A. Yes. That is what I always thought.

Q. You came to Oregon when there was a lot of homestead entries being made?

A. Right out here, M. C. George took up—I could have took up 80 acres out here if I wanted it.

Q. That is the way they were doing—they went to the land every six months, and were complying with the law, as they understood it?

A. Yes.

Q. Is that the way M. C. George took up his?

A. That is the way M. C. George took up 80 acres out here at Lents, Judge George—you know him, don't you?

Q. Yes.

A. He took up 80 acres out there.

Q. Lived in town, and went out occasionally to his homestead?

A. I suppose so; got the land anyway.

Q. That was the common custom in this country for years?

A. I believe so.

Q. How is that?

A. I don't know. I know he got the land, for that blacksmith over there begged for me to take up 80 acres; he had 80 acres, and he wanted I should take it. I was out there digging a well with John Collins—John Harrison he says, "You take up that 80 acres adjoining him," but I didn't. It was all brush and timber out there. I wouldn't live out in there.

Q. Now, you understood that you made substantially the same contract with Jones that the other veterans did, didn't you?

A. With Mr. Jones?

Q. Yes.

A. I didn't have much to say. I done all my business with Wells.

Q. I understand, Mr. Hummel, but you met these other men, Brigham and the rest of them, talked about this matter along?

A. Oh, I and Brigham used to jolly over it quite a good deal, for I was around his place all the time constantly.

Q. You understood, from talking with these other veterans, that they claimed the right to sell the land to anybody they wanted to.

A. They said the business all fell through.

Q. Well, some of it was patented, you know.

A. The claims had all been cancelled; they had cancelled all the claims.

Q. You know Mr. Rilea, don't you?

A. George Rilea, yes, sir.

Q. The gentleman that was on the stand yesterday that has an arm off?

A. Yes, sir.

Q. Now, you contracted to sell this land through him to a fellow up at Albany, didn't you?

A. Bob Montague.

Q. Yes.

A. Yes, sir.

Q. You were not selling to Jones at all; you were selling it to Montague.

A. Yes.

Q. And he paid you $100 on it?

A. I believe so.

Q. And when the patent didn't come, you didn't get the rest of the money?

A. I got nothing, no.

Q. No more?

A. No more.

Q. You just got the $100; and then Wells got $200 out of Jones, and put that up in somebody's hands for you?

A. Left it with Al Kadderly. Yes, he monkeyed around with it, and finally left it with Al Kadderly. I was making it too hot for him.

Q. Well, now, Mr. Hummel, the other gentlemen that testified that they made a contract with Jones,

under which he was to locate them, build their cabins, and do the cultivation, etc., and after the proof was made, was to get them a loan of $720; give them $200 in money, and pay up these expenses, and take a mortgage?

A. Well, that is the understanding, I believe with some of them, but they never talkd that to me that I had to give up any $700.

Q. You didn't understand that?

A. No. I knew that I hadn't it to give up, anyway; and I never would have it.

Q. Well, this was to be secured by a mortgage on the place? That covered the location fee, the building of the cabins, the cultivation—that sort of stuff—and a loan of $200?

A. Yes.

Q. That was to be secured by a mortgage on the place. Now, these men that sold out to Montague sold out subject to the mortgage, and he paid the mortgage off?

A. I suppose so.

Q. Now, you understood that transaction, did you?

A. Well, I believe that is what he told me down here in the Portland Hotel, with George Rilea. I don't know who else was there, but there is where I come over with George Rilea from the East Side.

Q. And that was Mr. Rilea's talk to you, that he would sell it to Montague, and get you some additional money?

A. Yes.

Q. And Montague would pay the mortgage off?

A. I suppose so.

Q. What?

A. Yes, it is about what he said.

Q. You knew that you would have all these things done for you and have a loan of $200 from Jones?

A. Yes.

Q. You understood that he had a mortgage on the place?

A. No, I didn't understand what he had, whether he had it or not, but I supposed he did, or else I would not have got the money.

Q. Yes; and having got the money, you assumed that you had given a mortgage, didn't you?

A. I signed something. I don't know what it was.

Q. You don't read and write, I think?

A. Not very much.

Q. You sign by mark?

A. Oh, I write my name when I ain't too nervous.

Q. These proof papers, according to the Assistant Attorney, show you signed by a mark. Having gotten a loan, and given a mortgage, then you contracted to sell your equity in the place to Mr. Montague for an additional sum, and got $100 on that.

A. Yes, sir.

Q. Now, how long did you work down in that community, Mr. Hummel?

A. Down on the Siletz?

Q. Yes.

A. For Jones?

Q. Yes, or anybody.

A. Oh, I don't think it was less than a month.

Q. Down around there for a month or less?

A. Yes, or less.

Q. How long service did you get credit for when you proved up?

A. How long service?

Q. Yes, service in the army. How much time did you have to your credit that was counted on your proof of residence?

A. I don't know.

Q. How long did you serve in the army?

A. I served till the War closed. My time was pretty near up when the War closed. I went in in 1862 and ended in 1865.

Q. You were in about three years, then?

A. Pretty close to three years. Lacked a few days.

Q. Was it your understanding that the Government gave you credit on your residence for your service in the army?

A. That is what I have always understood, we was to get deducted out our time that we served.

Q. Yes. And you also understood that if you

went to the place within the six months' time every time, you were complying with the law?

A. No, I didn't know. Wells told me I would have to go over there only once.

Q. Only once?

A. Go over and file on it, and go over to prove up, and come out and get your money. That is the way he told me. I guess he told others the same.

Q. I am asking you about your understanding of the homestead law gained by living here in Oregon when they were homesteading this country.

A. What?

Q. I say, I am asking you about your understanding of the homestead law.

A. Oh, I didn't know anything about it, not very much.

Q. You have testified here to knowing about this Judge George claim?

A. Oh, that out there, I was working out there, about being 80 acres out here in Lents. He wanted I should take it up, and I didn't; didn't have no idea of taking up any land.

Q. Too much brush on it?

A. Yes. It was right in the wilds.

REDIRECT EXAMINATION.

Q. Do you remember when the improvements were made on the land, with respect to the time when proof was made?

A. No, I don't.

Q. How long before proof was made was there any cultivation or improvement?

A. When I was in there working, do you mean?

Q. Yes.

A. I went in there in January and come out in February.

Q. You proved up in February?

A. No. I proved up along the next summer some time, but I didn't go up—I didn't go over here—I didn't go over to Siletz any more, because they said I had already been working enough, Wells told me, and it wasn't necessary for me to go.

Q. Did you get paid for the work you did down there?

A. Yes, he paid me.

Q. Who paid you?

A. Mr. Jones.

Q. And where did Mr. Jones pay you?

A. Paid me in his office.

Q. And how much did he pay you?

A. I don't recollect how much he paid me, but he paid me for all the work I had done, and my fare out.

Q. And what was the rate of pay at?

A. $1.00 a day.

Q. $1.00 a day. How many days do you believe you worked there?

A. Oh, I don't know—about a month, I guess; scarcely a month.

Q. Did you visit any of the other claims while you were there?

A. Oh, I cut brush around by them, passed by them.

Q. Did you see anybody living there, making it a home?

A. Nobody.

Witness excused.

Robert A. Miller, a witness called on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Mr. Miller, where do you live?

A. Portland, Oregon.

Q. How long have you lived in Portland?

A. About 14 years.

Q. What is your profession or business?

A. Lawyer.

Q. How long have you been a lawyer?

A. I was admitted in 1887.

Q. Here in the State of Oregon?

A. Yes, sir.

Q. And have been practicing ever since?

A. Nearly all the time.

Q. You are at present a practicing lawyer?

A. Yes.

Q. Did you represent any contestants for claims filed upon homesteads, the Siletz homestead lands?

A. I have, yes.

Q. Do you remember which claims were contested?

A. That is general. I represented a great many clients in contests in Siletz. To what do you refer?

Q. Do you remember the claim of Henry Marble?

A. Who was the contestant?

Q. J. F. Clark.

A. I represented J. F. Clark in some cases.

Q. Do you remember the contest of J. F. Clark against Longnecker? Did you represent Clark there?

A. I represented Clark, I think, in his contest cases he had in the Siletz, I think, during the years 1902 and 1903, probably.

Q. Did you represent the contest of Moulton v. Franklin Hummel, the witness who has just testified?

A. I think Moulton was one of the contestants.

Q. Do you know what became of the contest, what the result of it was?

Court: Doesn't the record show that?

Mr. Goldstein: Yes. We have the record. I merely want to show the outcome of that by virtue of an understanding or agreement had with Mr. Jones. We have the record which would indicate the result of the contest, except we would, of course, have to have the testimony of this witness.

Court: Did they have any negotiations with Mr. Jones about it?

Mr. Goldstein: Yes.

Court: Well, go ahead about that.

Q. Just tell the court and jury the negotiations you nad with Mr. Jones concerning these contests.

Mr. Hall: We object to that unless it pertains to these nine claims, or some of them.

Court: Whose claim is that?

Mr. Goldstein: All of these claims were entered upon in pursuance of this general agreement, particularly the claim of Morse, who testified, Menzo J. Morse, who testified, Daniel Clark, G. C. Lawrence, who testified, and Louis Paquet and Frank Hummel, who testified.

Court: Those are not the claims.

Mr. Goldstein: Not the nine claims; but these were the claims of the witnesses, who testified in pursuance to the ruling of the court.

Court: This has no relation to the contract which was entered into?

Mr. Goldstein: No, except merely to show the intent on the part of Mr. Jones with respect to disposing of any of the contests filed against claims that he induced to be filed in pursuance of the same general arrangement and scheme whereby the nine original entries were filed upon. These claims did not get to patent. That was the reason the claims did not include those. But I think we would be entitled to show any negotiations and under-

standing he had with Mr. Jones concerning the very same general scheme and understanding whereby these claims were filed.

Court: That is not charged as part of the scheme.

Mr. Goldstein: He is charged with fraud and deceit in inducing a lot of entrymen to file on these lands; not only in nine, but other persons, with intent and purpose.

Mr. Hall: If Your Honor please, the only reason this evidence, any of it, has been admitted, as I understand, is upon the theory that it might possibly show an intent by the commission of like acts at or near the same time; but to follow that on through after final proof, and then to determine what was done after that in regard to claims that the testimony shows were relinquished back to the Government, and on which the Government lost no money, or lost no land, doesn't seem to me to tend to throw any light upon the question here at issue, as to whether or not Jones defrauded the Government out of the nine claims that are here at issue. There are only nine. They are not claiming anything for these other claims. This is getting too far away. It is getting into a mass of testimony that is liable to befog the minds of the jurors and to give them the impression that the Government was in some way defrauded in regard to these other claims that are not in issue, claims that the Government did not lose.

Court: What is the question?

Mr. Goldstein: The question I asked him was as to what conversation he had with Mr. Jones concerning the settlement or compromise of these contests that were made by him as attorney for certain contestants against the very claims about which witnesses have testified as having filed in pursuance to the general understanding and agreement had with Mr. Jones.

Court: I will overrule the objection for the present, and see what develops.

Mr. Hall: We save an exception.

Q. Just go ahead, Mr. Miller.

A. I would like to have the question now.

Q. Just tell the conversation and negotiations you had with Mr. Jones concerning the compromise or settlement of these contests that were filed by you against claims which witnesses testified were made in pursuance and through an understanding had with Mr. Jones.

A. Would it be proper to explain up to that point?

Court: Well, no, you explain it from there.

A. While these contests were pending, as I remember, I met Mr. Jones in the hallway near the Land Office one day, and he jumped on me pretty severely for taking part in the contests, as I remember, and as the result of it, I think he made an offer of compromising the cases, with the statement that, I think, some of his clients or somebody

had loaned some money on these claims, and he had to protect them by seeing that the claims went to patent; and I think that he offered $200 to compromise each claim. That was to cover the expenses of—

Court: $200 apiece to your clients?

A. Yes.

Court: You didn't take it?

A. How?

Court: You wouldn't take it?

A. No. I put it up to my clients, and I think they—

Court: They rejected it?

A. No, they took it.

Court: They took it from him?

A. I think so. I think that that was the case.

Court: Did they relinquish their contests?

A. As I remember, Jones didn't think very much of my client, and he said that the compromise that was made, he wanted some guarantee that these people would not turn right around and contest again; and a I remember, the cases were to be called and appearance made for these people as a guarantee that they would not come right over again and eventually re-file the contest against him. And I think that was the way they were disposed of. The cases were called and some testimony offered.

Court: So your clients got $200 apiece out of Jones?

A. Yes.

Q. I notice also you appeared in a contest against J. L. Wells, one of the nine entrymen included in this suit. Do you remember that?

A. Who was the contestant?

Q. L. D. Moulton.

A. I guess I was the attorney in that case.

Q. And was the same proceeding and understanding had with Mr. Jones as the others that you have already testified to?

Mr. Hall: Objected to as suggestive and leading.

A. Well, if I appeared—I am not sure about that.

Mr. Hall: I am going to insist on my objection, Your Honor.

Court: Very well; the objection will be overruled.

Mr. Hall: We save an exception. The question is suggestive and leading.

Mr. Goldstein: Well, I will withdraw that question.

A. If you have the copy of the proceeding, I could—

Q. I am sending up for them now.

A. Refresh my memory about it. It has been 15 or 16 years ago.

Q. Do you remember whether you represented one L. D. Moulton in contest pending at that time?

A. I remember the name of Moulton. It is possible I was the attorney for Moulton.

Q. Can you recall now as to the result of that contest against John L. Wells, on behalf of Moulton?

Court: Do you remember the talk you had with Mr. Jones at that time concerning that contest?

A. I remember the name of Moulton. I remember the name of Moulton.

Court: But you don't remember any conversation you had with Jones about it? Is that the fact?

A. I wouldn't, no. Unless I refreshed my memory from the record, possibly.

Court: I don't think you would be able to prove that any further. He says he doesn't remember.

Mr. Goldstein: I have the record being brought down here, if the court please. I would like to introduce the record.

Court: That would not give the conversation.

Mr. Haney: He might refresh his memory about it.

Court: He might refresh his memory.

Mr. Goldstein: Wells' entry is in evidence here.

Court: Mr. Wells got his patent for the land, didn't he?

Mr. Goldstein: Yes, it was commuted, but that was before the commutation. I think that is the reason it was commuted.

Court: And he paid $1.50 an acre, didn't he?

Mr. Goldstein: Yes.

Q. Do you know anything about the Slade contest?

A. What is the name?

Q. Slade—Frank Slade.

A. Frank Slade—who was the contestant?

Q. Frank Slade against Wells.

A. No, I don't think I would.

Q. How many conversations did you have with Mr. Jones altogether, concerning these matters, do you recall? Did you have a number, or how many?

A. Well, there was only one in regard to this compromise, I think. I may have seen Mr. Jones afterwards in regard to whether the cases were disposed of, or something, according to the compromise; but I don't remember specially about that.

Q. Then, as I understand it, all these contestants were disposed of by the payment of $200 apiece?

A. As I understand.

CROSS EXAMINATION.

Questions by Mr. Bowerman:

Q. The substantial part of that compromise money went for expenses and attorney's fees, didn't it?

A. Yes, sir.

Q. Do you recall approximately what proportion went to the client, and what proportion went for costs or attorney's fees?

A. I remember my client said that in this com-

promise it would have to be enough to include the attorney fee. I got $25, I think, out of each case.

Q. Then there were naturally some costs of travel, service, and all that sort of stuff included in it? Service of contest notices?

A. I don't know so well about that now.

Q. How is that, Colonel?

A. I don't know so well about that. I won't say. But during that time I was in contests all the time every day, and Mr. Clark was an attorney, and so far as just the main features of it—I didn't have anything, didn't pay any attention to the detail about it.

Q. He was an attorney, too?

A. He was an attorney, and I was assisting him. He was not familiar with the land law, and when it came to any matter of serious import that he wasn't familiar with, I took that part of the work.

Q. If the contest had gone on, Mr. Jones would have been to the expense of calling witnesses, hiring attorneys, introducing testimony at Oregon City, in the ordinary course of defending a contest? Then, after decision, there then would have been the next step in that contest?

A. Then an appeal to the Commissioner, and then to the Secretary, and then a review.

Q. So, either party that lost out at Oregon City could appeal to the Commissioner?

A. Yes, sir.

Q. As business was done in those days, about

how long a time would have elapsed after the appeal before decision could be reached?

A. It took about a year and a half to two years to get a case through and finally decided. Nearly always the cases went to the Commissioner, to the Secretary, and then reviewed, if it was a hard fought case; it took from a year and a half to two years.

Q. There had to be a transcript made of the testimony? The stenographer had to take it down and write it out?

A. The testimony cost 22½ cents a hundred words.

Q. Every one hundred words cost 22½ cents to the man that put in that testimony?

A. For a trial of any length, it cost a lot of money for transcribing the testimony.

Q. For instance, the testimony your client put in, your client paid for it?

A. He had to pay for it.

Q. The testimony Mr. Jones put in, he would have to pay for that? Each party paid for their own direct examination, and the cross examination? That was the rule, wasn't it?

A. That was the rule at one time, and then it was not the rule all the time.

Q. And there was no provision of law for a man recovering costs?

A. No, sir.

Q. If Jones had licked this man, he would have

been out his attorney's fees, and been out all the money for witness fees and transcribing the testimony, and all that kind of thing? I say, he would have been out that—he could not have recovered?

A. Yes.

Q. No matter how wealthy his opponent was, there was no law for taxing costs, so he could not have recovered them?

A. That is right.

Q. Now, on the appeal, in addition to having this transcript of all the testimony typewritten, in the ordinary course of affairs his attorney would have had to have gotten up a brief, wouldn't he?

A. Yes, sir.

Q. Covering the facts and the law?

A. Yes, sir.

Q. And after the decision by the Commissioner, they would do the same thing over again on appeal to the Secretary?

A. Yes, sir.

Q. And then on appeal, there would be another brief?

A. Yes, sir.

Q. So there would be the oral argument at Oregon City by the attorney, then after decision there, it would have to be appealed?

A. As a rule, there was not an oral argument. There were briefs filed.

Q. They filed briefs at Oregon City?

A. Filed briefs.

Q. And naturally an attorney would have to go through this great volume of testimony before he could file a brief?

A. Yes, sir.

Q. And then he would do the same thing before the Commissioner?

A. Yes, sir.

Q. Same thing before the Secretary?

A. Yes, sir.

Q. And again on review?

A. Yes, sir.

Q. So that it is usually a matter of considerable labor?

A. Yes, sir.

Q. And naturally considerable expense?

A. Yes, sir.

Witness excused.

J. F. Clark, a witness called on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Mr. Clark, what is your present occupation or profession?

A. I am an attorney.

Q. How long have you been an attorney?

A. Since 1897.

Q. Admitted to practice in the State of Oregon?

A. Yes, sir.

Q. How long have you lived in Oregon?

A. A little over 44 years.

Q. Mr. Clark, did you file any contest against these old soldier entrymen who filed on homestead lands in the Siletz?

A. I did.

Q. Were you represented by an additional attorney?

A. By Colonel Robert A. Miller.

Q. The witness who has just testified?

A. Yes, sir.

Q. Did you receive any money from these contests?

Objected to as incompetent, irrelevant and immaterial.

Court: I don't see how that affects this case.

Mr. Goldstein: I will link that up with Jones' interest in these cases.

Q. Did you have any talk with Mr. Jones or was he present at any of these contests?

Objected to as incompetent, irrelevant and immaterial.

Court: What contests do you refer to?

Mr. Goldstein: The same contests Mr. Miller testified to.

Objection overruled. Exception allowed.

A. Mr. Jones was present at one of the contests.

Q. Do you recall which contest that was?

A. I think it was the contest against Menzo J. Morse.

Q. That is one of the witnesses who testified here he filed upon the land?

A. He was one of the homesteaders, yes.

Q. What took place at that time, do you recall?

A. The contest was heard for two days, and they adjourned then for further hearing. The contestee was represented, I think, by Mr. Cowan, T. F. Cowan, now deceased, and Mr. Miller conducted the case for the contestant; and Mr. Morse and Mr. Jones were both present at the contest, both defendants.

Q. What was the result of that?

A. It never went to decision. The matter was compromised and settled before it was completed, for the reason that the expenses were piling up. I don't know as that is necessary.

Q. Who paid the compromise?

A. It was a check from Mr. Jones.

Q. A check from Mr. Jones. Do you recall how much?

A. It was for $500.

Q. $500?

A. Yes.

Court: He paid that to whom?

A. To Colonel Robert A. Miller, my attorney.

Q. Was there an understanding before the taking of testimony in the contest?

A. No, none at all.

Q. Wasn't there some discussion with Mr. Jones concerning that?

A. Not to my knowledge.

Q. You were represented by Mr. Miller?

A. Yes.

Court: This testimony, unless there has been some conversation with Jones about it, is irrelevant and immaterial. This man is not testifying to any conversation he had with Jones.

Mr. Goldstein: He is testifying as to receiving $500 from Mr. Jones.

Court: Yes, he received $500, but that doesn't state a conversation.

Q. Do you know what that $500 was for?

A. It was in payment of my consent to drop the contest.

Court: I will sustain the objection to this testimony.

Government allowed an exception.

Mr. Bowerman: All his testimony is out, your Honor.

Court: Yes, all his testimony is out.

Mr. Goldstein: All the testimony of Mr. Clark?

Mr. Bowerman: Yes, that is what I mean.

Court: Yes. I supposed you were going to have some testimony as to what Mr. Jones had said that would be an indication on his part. That has not come out at all.

Mr. Goldstein: I thought, if the court please, when I showed by Mr. Miller the conversation he had with Jones, then I would call Mr. Clark to

corroborate the result of the negotiations and conversation he had with Mr. Jones.

Court: I do not think that is competent, to corroborate admissions in that way.

Witness excused.

Gilbert L. Hedges, a witness called on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Mr. Hedges, you are a practicing attorney, are you, in the state?

A. Yes, sir.

Q. How long have you been admitted to practice?

A. Admitted in October, 1898.

Q. What is your present position?

A. District Attorney, Clackamas County.

Q. Mr. Hedges, did you ever have any conversation, or have any negotiation with Mr. Willard N. Jones, defendant in this case, concerning the compromise of certain contests against homestead claims filed on the Siletz Reservation?

Mr. Hall: Objected to as incompetent, irrelevant and immaterial.

Court: Objection overruled for the present.

Mr. Hall: We save an exception.

A. Mr. Jones came to my office one time, and

I compromised three cases against entrymen in the Siletz Reservation.

Q. What was the understanding or arrangement you had with him?

Court: Well, now, you better get the conversation in this case, or this testimony will go out on the same ground as before.

Q. What was the conversation you had with Mr. Jones?

A. Simply negotiations to settle the cases.

Q. State more fully, please, what was said.

A. Mr. Jones came to my office, I believe—what was the title of that case, Mr. Jones?

Q. Esther P. Collins.

A. No, the title of the contestant?

Q. Oh, Adna Crosno.

A. Yes. Mr. Crosno was a client of mine, and contested a number of cases down there. And Mr. Jones came to my office and paid $500 for the compromise of three cases; and if I remember rightly now, the compromise was that the contest was withdrawn on those three cases.

Court: This testimony will go out the same as the other. I don't think it is pertinent. I understand these cases the witness is talking about are not the cases that are in suit. This is an entirely collateral inquiry for the purpose of showing Mr. Jones' intent and purpose. You have already shown that, so far as the testimony indicates, when you have introduced these witnesses as to the contract

that was made, and as to what was done in making final proof. Now, when you go further and undertake to show what was done in the contest, it is getting very far away from the issue.

Government allowed an exception.

Witness excused.

Mr. Bowerman: If the court please, these certified copies from the Land Department that have been introduced, were not exhibited to us, and on going through them, I find a lot of extraneous matter in them. I find a lot of outside matter under these certificates; a lot of contest affidavits, a lot of certified copies of letters back and forth between special agents, things of that kind. We wish to move them to be stricken out.

Court: The papers introduced will be taken from the files, and those papers will go in without the others. That is the only way to do it.

Mr. Bowerman: They will be taken apart?

Court: Yes, they will be separated and taken apart.

Mr. Bowerman: They offered the record and patent. Along with it is a lot of correspondence.

Court: Well, that will all go out. That has no right to go to the jury. I suppose you will have to take the papers that were introduced in evidence away from the other files, so that the other files will not go to the jury.

Mr. Bowerman: They are all bound together under one certificate.

Court: The only way to do it is to take them out. It will have to be done that way, if you insist upon the motion.

Mr. Bowerman: I am compelled to insist on it, Your Honor.

Court: Very well.

C. W. Mead, a witness called on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Mr. Mead, where do you live?

A. I live at 632 East Madison street, Portland.

Q. How long have you lived in Portland?

A. About 25 years.

Q. Do you know the defendant, Willard N. Jones?

A. Yes, sir.

Q. How long have you known him?

A. I think about 20 years; possibly more.

Q. What is your business or occupation?

A. Timber cruising.

Q. And how long have you been engaged in that vocation?

A. About 40 years.

Q. Mr. Mead, were you hired by Mr. Jones to do any work for him in connection with the Siletz lands?

A. Yes, sir.

Q. Just tell the court and jury when you first entered on that employment, what he told you to do, and what you were supposed to do, and what you did do.

A. He hired me to look some land in the Siletz country, and said he had some to look down there, and I went down and worked about a month at that time, cruising certain lands. He made a plat of it.

Q. Where did he have that conversation with you as to what he wanted you to do?

A. What is that?

Q. Where did he have that conversation with you as to what he wanted you to do?

A. I don't remember just where it was, here in Portland. I think at his office, perhaps. I don't remember exactly about that.

Q. Do you remember when that was, what year?

A. I think it was in 1900 or 1901. It might have been 1901.

Q. Now, what did he ask you to do for him?

A. To do some cruising, estimating timber.

Q. Cruise some timber where?

A. In the lower Siletz country.

Q. How many townships?

A. I think it was part of four townships.

Q. Do you know just where in the Siletz country you were to do this cruising?

A. I don't remember just. It was near the head of tide water, what is called the Canoe Landing at the head of tide water on the Siletz.

Q. Near the Canoe Landing?

A. The Canoe Landing; near Canoe Landing.

Q. You mean the Siletz Reservation there?

A. Yes, sir.

Q. Why did he want you to do this cruising, did he tell you?

A. No, sir; not at that time.

Q. You went down there and cruised first?

A. Yes, sir.

Q. And how long were you down there cruising?

A. I was there about a month, as I remember, at that time; and I came to Portland and went back again and cruised, I think, about two weeks after that, after the first trip.

Q. Did you have any talk with him after you made that first month's cruise?

A. Yes, sir.

Q. And what did he say to you then?

A. Well, he told me at that time, after I came back, that he was going to locate some soldiers on some of that land; and I think that was about all. He had some extra work to do, and he wanted me to go back and finish the work, which I did.

Q. What was the extra work that you were to do?

A. Cruising.

Q. And how long were you down there altogether, cruising?

A. I think about six weeks.

Q. Did you see any soldiers there ?

A. Yes, sir.

Q. Do you remember whom you saw?

A. I couldn't say who they were. I met—that was the second trip after I went down the second time; I think I was on my way out from the woods—there was a whole bunch of them there at Canoe Landing.

Q. Now, how many of them do you think there were at Canoe Landing?

A. Oh, I think there was at least a dozen. Now, I couldn't say just how many.

Q. All old soldiers?

A. All old soldiers, as I understood.

Q. And what is this Canoe Landing that you have testified to?

A. It is at the head of tide water on the Siletz River, or nearly at the head.

Q. Is there any cabin there?

A. Not at that time there was not.

Q. Where were they stopping, do you know?

A. They were camped on the bank of the river there.

Q. What were they doing there, do you know?

A. Well, they were staying over night. They had a fire, camp fire—two or three camp fires, having a jolly good time there, the whole bunch of them. They weren't doing anything particular.

Q. Did you make your report to Mr. Jones as to the cruising you did?

A. Yes.

Q. And what did you tell him?

A. I think I handed him my book that I made my notes in. Of course we had a general talk about the timber.

Q. What did he say as to just what lands to cruise? Were you to cruise all the lands or make any exceptions?

A. I think he instructed me if I found any land that was not pretty good land, why, to pass it up.

Q. What did he say about the pretty good land? What did he mean by that, do you know?

A. Well, I couldn't say really. I took it for granted it was whether it would be well timbered or not.

Q. You were to pass up any land that was not well timbered?

Mr. Hall: I object to putting words into the mouth of the witness. He said he supposed that. Now, counsel is assuming he told him. I think that is unfair.

Q. Pretty good land. What were you going to cruise?

A. Timber land; timber.

Q. Well, that is all a cruiser does, is to cruise timber land.

Mr. Hall: He did not tell him if it was not good timber land.

Q. What did he tell you to pass up?

A. I don't remember he told me to pass up particularly anything. It was if I come to a country

that was not well timbered, why, not to spend too much time on it—something like that. That was my understanding.

CROSS EXAMINATION.

Questions by Mr. Bowerman:

Q. How far from the railroad did you begin to work, Mr. Mead?

A. What is that?

Q. How far from the railroad did you begin to cruise? How far was it from the nearest railroad point? I mean by the road you travelled going out there?

A. I think it was—it was five miles below Siletz Agency. Just how far that is from the railroad, I don't remember.

Q. Which way did you go in?

A. Went in from Toledo.

Q. Do you remember how long it took you to get from Toledo out to where you began to work?

A. I think about a day.

Q. And how far back from there did you work?

A. Now, I can't remember exactly, but I think I was back seven or eight miles in some places.

Q. What is the topography of the country in there?

A. Pretty rough.

Q. Is it broken, or is it just stream systems?

A. Some places broken; some places high, rolling.

Q. Is it right in the Coast Range Mountains?

A. Yes, sir.

Q. How far from the coast?

A. I think about 15 miles from the ocean. I think about that. I am not positive just how far it is.

Q. Was the timber in there young or matured timber? That is, large timber.

A. It was mixed; both.

Q. How is that?

A. It was mixed timber, old growth and young growth.

Q. Which predominated?

A. Old growth.

Q. On the land that you cruised, was it what you might term heavily timbered?

A. Some parts of it.

Q. Was it land that could easily and economically be reduced to cultivation?

A. Some parts of it was.

Q. What proportion of an average quarter section could be reduced easily to cultivation?

A. Well, a very small part. I don't know really just what portion of it.

Q. What?

A. Only a very small part of it that could be cultivated.

Q. And what do you say as to the rest of it, whether it could be cleared up for any reasonable amount of money?

A. Pretty heavy clearing, most of it.

Q. What size trees would predominate?

A. Oh, different ones. Most of it was large timber, old growth, as I remember it; mixed young growth and old growth.

Q. That old growth would be trees four or five feet through?

A. Yes, sir, some of it; some larger than that.

Q. Fir, I take it?

A. Fir and spruce; cedar.

Q. Fir and spruce?

A. And cedar.

Q. Now, on an average quarter section of the land you cruised, would there be more than an acre or two that could be cleared for any reasonable amount of money?

A. Part of it there were places where it could be cleared quite easily. A great deal of it, though, was heavy timber, very heavy timber, hard to clear.

Q. I am asking you to just get a picture of it in your mind, Mr. Mead, and I speak of an average quarter of the whole business; would there be more than an acre in some little glade, or something of that kind, that was easily cleared?

A. Well, there might have been more than an acre, but there was only a very small part of it that could be easily cleared.

Q. Were there county roads through that country then?

A. There was a road running down to Canoe

Landing, I think was a county road at that time; and a survey made on down around the river; but it was not—it was practically cut out, but could not be travelled by team.

Q. Canoe Landing was as near as you come on a public highway?

A. Yes, sir.

Q. And was that the nearest point from the railroad to the timber in question?

A. Yes.

Q. From there on just virgin forest?

A. Yes, sir.

Q. Now, what was the means of getting that timber out of there at that time, the timber you cruised?

A. Well, the only means would be to log it into the tide water, float it down the river.

Q. Was there a harbor down there?

A. Well, I understand there is not much of a harbor there.

Q. How far was it from the river?

A. Well, now, I could not say till I see the map. I don't remember how far this timber was from the river. It has been a long time since I was in there, and I haven't got the map of it, and don't remember exactly. You refer to the claims that they took up?

Q. Yes, the land you cruised, I want to know about how accessible that was.

A. Part of it was handy to tide water, and some of it was away back, further back, of course.

Q. By handy to tide water, you mean within a mile or two?

A. Oh, if I remember right, some of it was right on the water.

Q. Right on the water, some that you cruised?

A. I think so, yes, sir.

Q. What proportion of it do you think would be right on the water?

A. Only a small part of it.

Q. Very small?

A. Very small.

Q. The rest lay back, some of it as much as nine miles?

A. Lay back—I think so—seven or eight miles. I don't remember the exact distance.

Q. And the intervening country was rough, rugged, broken country?

A. Well, generally speaking, yes.

Q. Without any kind of roads?

A. No roads whatever.

Q. Had that land been opened to settlement at the time you went in there?

A. I couldn't say as to that; I don't remember.

Q. It had been an Indian Reservation, I understand?

A. I think it was, but I am not sure.

Q. Do you remember when it was that you went in there?

A. I went in there in the summer of 1901, I think.

Q. Was there any evidence of settlement, residence, cultivation, or anything of that kind on any of the land you cruised at the time you first went in there?

A. No, sir.

Q. Was there any evidence of any settlement or habitation on any of that Siletz Reservation at that time?

A. Yes, sir. It was settled down to Canoe Landing from the south.

Q. From the south?

A. And down at Roots postoffice—that is below three or four miles—there was a settler there, living there.

Q. What were they, Indians or whites?

A. Well, those that lived near the landing, most of them were Indians; I guess all of them.

Q. Allotted Indian land, I take it?

A. Yes, sir. Well, I couldn't say that.

Q. They lived in their native places, or did they have houses?

A. They had houses, I think, most of them.

Q. What number of white men were living in there at that time?

A. Well, as I remember now, there was only one white man. That was at Root postoffice, down the river three or four miles. I think that was the only white man, as I remember now.

Q. Do you have your record of the cruise, Mr. Mead?

A. I don't think I have. I looked for it, but couldn't find it. If I have it, I failed to find it.

Q. At whose request did you hunt for it, Mr. Mead?

A. Mr. Jones'.

Q. Recently made?

A. Yes, sir.

Q. Were you recently requested to do that?

A. Yes, sir.

Q. (Redirect) What did you do with the cruise in the first place? Whom did you give it to?

A. Mr. Jones.

Q. (Juror) Did you find all or most of the sections forest on your cruise down there?

A. I think I did; found most of them, anyway.

Witness excused.

Alfred Stanton, a witness called on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Where do you live, Mr. Stanton?

A. Toledo, Lincoln County, Oregon.

Q. What is your business?

A. Well, at present I am in the Engineer Corps of the Railroad Service.

Q. Where were you living in 1900, 1901 and 1902?

A. I think in 1900, I was living at Toledo.

Q. What was your business then?

A. At that time I was working in the woods.

Q. Do you know the defendant, Willard N. Jones?

A. Yes, sir.

Q. When did you first meet him, do you remember?

A. Well, I think it was along about 1900; somewheres along there.

Q. Where did you meet him?

A. I think I met him in Toledo.

Q. Were you employed by him to do any work on certain lands in the Siletz Reservation there?

A. Well, I don't know in regard to certain lands. I was employed to do some work for him.

Q. What were you employed to do by him?

A. Build cabins.

Q. And where were you to build the cabins?

A. In the Siletz country.

Q. What particular places? Where were you to build them on? Who designated the places?

A. Mr. Mead. But in regard to the particular places, I don't know whose places they were; never paid any attention.

Q. What were you to receive for those cabins?

A. $30 apiece.

Q. $30 apiece. How many of such cabins did you build?

A. Eighteen.

Q. Eighteen. Do you remember on whose claims you built them?

A. No, sir.

Q. Do you know whether they were old soldiers or not?

A. I do not; didn't pay any attention; never told me whose they were.

Q. When did you start building the cabins?

Court: Is it necessary to take up very much time with that? I understand the defendant admits he built those cabins? Isn't that true?

Mr. Goldstein: I want to get from the witness the extent of the building.

Court: He can testify as to what kind of cabin he built.

Mr. Goldstein: That is what I propose to ask him.

Q. What sort of cabin did you build on these claims?

A. Log cabin, 12x14, six-foot wall.

Q. Did you build the floors?

A. No, sir.

Q. Was there any furniture in these cabins?

A. No, sir, I didn't agree to put any in.

Q. Was there any bedding in the cabins?

A. I didn't have any bedding put in.

Q. Was Mr. Jones present at the time when these cabins—

A. No, sir, not that I recollect of.

Q. How long were you on the reservation there building cabins?

A. I think I was there 25 days; somewheres along between 20 and 25 days.

Q. Were you in and about the vicinity for a year afterwards?

A. Yes, sir.

Q. Do you know whether the old soldiers, whether any of the old soldiers lived there or made it their homes?

A. I do not.

Q. Were you present when the proofs were made at Toledo?

A. I think I was in the courtroom when some of them made proof?

Q. How were the proofs made, do you remember?

A. Well, sir, in regard to that now, I couldn't tell you. It has been a good many years ago.

Q. Did you see Mr. Jones after that?

A. I think I saw him once. What date I couldn't tell you now.

Q. What conversation did you have with him then, if you had any?

A. I think it was something like this: That he asked me if I had got the work done, or something. I don't know now as I had it done; something that he would settle with me when the work was done. I don't remember now.

Q. Was settlement made with you by Mr. Jones?

A. Yes, sir.

CROSS EXAMINATION.

Questions by Mr. Bowerman:

Q. Did you see the cabins after you had built them? That is, six or eight months after you had built them?

A. No, sir, I never went back. I might have passed by some of them, but I had no occasion to go there.

Q. There were a good many other cabins in the Siletz there, besides the ones that you built, weren't there?

A. Plenty of them.

Q. These were as good as the others, weren't they?

A. About as well as any that I have seen.

Q. The other cabins were homesteaders'—squatters' cabins?

A. Yes, sir.

Q. It was the general practice over there at this time for a homesteader to visit his claim once in six months, wasn't it, Mr. Stanton?

A. Well, that was generally the custom.

Q. How is that?

A. That was generally the custom.

Q. The general custom in that country. There were how many—four or five hundred homesteads in that Siletz Reservation?

A. Well, there were a good many. I don't know how many.

Q. And that was the general custom in that community?

A. With a great many people.

Q. People came in there from Salem, Albany, and all over the valley?

A. From Salem, a good many of them.

Q. Filed on homesteads, and came back there once in six months.

A. Yes, sir.

Q. To comply with the law, as they called it?

A. I suppose they were.

Q. These old soldiers' cabins averaged up as good as the average cabins on that reservation?

A. What I had seen of them, yes.

Q. How long since you have been over in that country, Mr. Stanton?

A. Down through there?

Q. Yes.

A. I was over the mountain this fall, but not by—I might have passed by one or two of these claims.

Q. I mean on the reservation generally. Have you been over it?

A. Why, no, I have not. I was over it this fall. It has been several years since I was over it.

Q. Anybody living on any of these timber claims now?

A. No, sir, not that I seen.

Q. All the cabins you saw on the reservation in timber land are deserted?

A. Oh, yes.

Q. Did they look like they had been deserted for a good many years?

A. Well, they are all decayed, falling down.

Q. There is no evidence of recent habitation?

A. No, sir.

Q. Any of them—the old soldiers or anybody else?

A. Not fit for anybody to stay in.

Q. Any clearing or farming in that heavy timber?

A. It is all growed up.

Witness excused.

Stephen Farrell, a witness called on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Mr. Farrell, where do you live?

A. 15 East 10th, Portland.

Q. How long have you lived here?

A. 50 years.

Q. 50?

A. 50.

Q. Do you know the defendant Jones?

A. I met him.

Q. When did you first meet him?

A. 1901, I think.

Q. About 1901, you say?

A. Yes.

Q. What were you doing at that time? What was your business?

A. My business?

Q. Yes.

A. Retired.

Q. Were you doing anything at that time here in Portland, working?

A. Oh, no, not much.

Q. Did you have any talk with Mr. Jones about doing work for him in the Siletz country?

A. Well, I think Mr. Hummel took me over to his office.

Q. Who took you up to his office?

A. Frank Hummel.

Q. Frank Hummel?

A. I think so.

Mr. Hall: Speak a little louder, Mr. Farrell, will you, please?

Q. He was one of the witnesses here, Frank Hummel, the man with the crutch?

A. Yes.

Q. What did you say when you got there to Mr. Jones' office? What was said?

A. Well, Mr. Hummel wanted me to go down with him as company. He wouldn't go down without I went with him down there to do some clearing.

Q. What did Mr. Jones say as to having you go along?

A. Well, he was satisfied.

Q. What were you to do?

A. Well, just the same as Mr. Hummel.

Q. And who was to pay you?

A. Mr. Jones.

Q. And how much were you to receive from Mr. Jones?

A. I think Mr. Hummel made the agreement with him, $1.00 a day.

Q. $1.00 a day?

A. Yes.

Q. And how long were you down there?

A. I was down there, I think, about six weeks.

Q. Where were you stopping when you were there?

A. What is that?

Q. Where did you and Hummel stop while you were there?

A. Well, we stopped at headquarters at Canoe Landing.

Q. What did they call that place?

A. Canoe Landing.

Q. What did they call the cabin?

A. Well, I don't remember now.

Q. Oh, there wasn't a cabin there then, was there?

A. There were two cabins there close together.

Q. At Canoe Landing? Were there any cabins built on the claims over there?

A. Oh, there were a few cabins, yes.

Q. Was there anybody living there?

A. Not at the time.

Q. Did you receive any money from Mr. Jones?

A. I did.

Q. And how much did you receive altogether?

A. I think along about, if I remember right, about fifty odd dollars—fifty-two.

Q. What was the work you did, Mr. Farrell?

A. What was the work I did?

Q. Yes.

A. Well, clearing.

Q. How much clearing did you do on each claim?

A. Well, we worked on two or three, four or five different claims.

Q. How many claims did you work on?

A. I think about four or five.

Q. Who showed you where to work?

A. Why, I think Mr. Mead's partner.

Q. Did he tell you so and so was the claim?

A. Yes.

Q. And then what did you do?

A. Well, we started and cleaned it up.

Q. How much clearing did you do on each claim? How much clearing did you do? What was the extent of that clearing?

A. Well, we done considerable.

Mr. Hall: Objected to unless it is confined to

the nine claims at issue. I would like to have counsel take the various claims that are here in issue and show what the clearing was on each one.

Q. Do you remember any of the claims you cleared on, the names of the men?

A. Mr. Wells for one.

Mr. Goldstein: Well, that is enough, isn't it?

Mr. Hall: If he can't remember the individuals, he can't remember the total.

Q. Well, do you remember Mr. Wells?

A. Yes.

Q. Were you working on his claim?

A. Yes.

Mr. Goldstein: I think that is enough now, to prove that he worked on one of those claims.

Q. Now, what clearing did you do on Wells' claim?

A. Well, we cleaned up—we cleaned up and cut out some trails there, whatever was needed.

Q. How much clearing did you do on Wells' claim? What was the extent of it?

A. Well, not very much.

Q. Not very much?

A. No.

Was it about the same on what other claims you worked on?

Mr. Bowerman: Objected to as leading and suggestive.

A. Well, a little heavier.

Q. Did you do any grubbing?

A. No grubbing.

Q. Was any grubbing done at all?

A. No; slashing.

Q. Were there any trees cut by you?

A. What is that?

Q. Did you cut down trees?

A. No; no large trees, no.

Q. How were they—timbered or not? Was Wells' claim timbered or not timbered?

A. I think his cabin laid—

Q. Did you do any cultivation?

A. No.

Q. Did you do any planting of anything?

A. No.

Q. Was there any planting done?

A. No.

CROSS EXAMINATION.

Questions by Mr. Bowerman:

Q. What time of the year were you there?

A. What time? I think either January or February now. I didn't keep track of the time.

Q. Is it customary to plant stuff down there in that country in January or February, do you think?

A. I think it was in January, the latter part. It might be in February. I didn't take any—

Q. Did you see anybody planting stuff down there while you were there?

A. No; I didn't; no.

Q. Well, you didn't do any grubbing?

A. No.

Q. Well, if there was grubbing done, it was done after you were there, then?

A. Well, we didn't do any grubbing. That is, Hummel and myself we did no grubbing.

Q. What were you doing? Building trails around there?

A. Building trails and clearing off patches.

Q. Clearing off patches. You mean just slashing it down?

A. Yes.

Q. All you were doing was cutting brush?

A. Yes.

Q. Whatever grubbing was done was done after you were there. You got $1.00 a day and your expenses?

A. Yes.

Q. Jones paid your expenses, and gave you $1.00 a day?

A. Yes.

Q. He paid you all that was coming to you, didn't he?

A. Yes.

Q. You did your work?

A. Yes.

Q. You were down there about how long?

A. I think about six weeks.

Q. About six weeks?

A. In that neighborhood.

Q. You and Hummel went and came together?

A. What is that?

Q. You and Mr. Hummel went down together, worked together, and came back together?

A. Well, we didn't come back together. Mr. Hummel came ahead of me, I suppose about eight or ten days.

Q. He came eight or ten days before you came?

A. Yes, I think so, if I remember right.

Q. You stayed about how long after he came back?

A. Yes, I know he came out ahead of me.

Q. Were there other men working around on those claims at the time you were there?

A. The men only that went up with us, Mr. Mead, he remained there, I think. Mr. Mead came out, though, ahead of me.

Q. You and Hummel and Mead and who else?

A. That is all; four of us.

Q. Do you remember Mr. Danforth?

A. Yes, that is the man.

Q. Was he down there?

A. Yes, he was down there. I left him there, when I came out.

Q. Did he stay when you came out?

A. I left him there.

Q. You left him there?

A. Yes, I worked with him there.

Q. When you came out he stayed?

A. Yes.

Q. Anybody else?

A. No.

Q. That is all you remember of. Do you remember a man by the name of Blauvelt?

A. No.

Q. You don't remember him?

A. No.

Witness excused.

Ira Wade, a witness called on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. You are a little deaf?

A. Yes, sir, I am.

Q. Where did you live in 1902?

A. At Toledo, Oregon.

Q. What was your position at that time?

A. County Clerk of Lincoln County.

Q. County Clerk of Lincoln County?

A. Yes.

Q. When did you take office?

A. The first Monday in July, 1902.

Q. Do you know a man by the name of Potter, Thad Potter?

A. Yes, sir.

Q. Do you know a man by the name of Willard Jones, the defendant?

A. Yes.

Q. Did you have anything to do with taking

the final proof of homestead entrymen on the lands in the Siletz Reservation?

A. I did.

Q. Did you have any conversation with Potter or Jones about sending the final receipts?

A. I didn't with Jones. I did with Potter.

Q. Just tell what the conversation was.

A. Well, after I had taken the testimony of the entrymen and read it through, and it had been sworn to by some of them, something was said about the final receipts, and Potter made some suggestion to the entrymen about having them mailed back to me, and then mailed to Jones, I believe. The entrymen agreed to this. And shortly after that I was in Portland, and while I was away the receipts came, and my—probably it was a deputy in the office, and he heard the conversations—mailed the receipts, I believe, to Mr. Jones here in Portland.

Q. And where did the receipts come from initially?

A. How?

Q. Where did the receipts come from?

A. The Oregon City Land Office.

Q. And they were mailed direct to you instead of to the entrymen?

A. Yes.

Q. Who paid the fees for the making of these proofs?

A. Well, I don't remember now, but I think the entrymen themselves paid it. I am not positive

of that, whether they did or not. I wouldn't say for sure. It has been a long while ago. I don't remember exactly about that.

Mr. Hall: Objected to unless the particular entrymen are designated.

Q. Was anyone present with these entrymen when they made their proofs—Mr. Potter or Mr. Jones or anyone else?

A. Mr. Jones was not. I didn't know Mr. Jones except I had seen him once then. Mr. Potter was around there, and the entrymen and various parties around as usual when they were taking proofs.

Cross Examination.

Questions by Mr. Hall:

Q. What entrymen do you refer to, Mr. Wade?

A. Well, I don't remember all the names now, but there was a man by the name of Longnecker. I remember a man by the name of Merrill. And there were some eight or nine—I can't recall their names now. I remember about Merrill being there, and a man by the name of Longnecker.

Q. Those are the only two that you can recall?

A. Well, for sure. I cannot remember the names of all of them—it has been so long ago. There were either eight or nine, something like that, in this bunch.

Q. At whose request do you say you sent the final receipts to, Mr. Jones?

A. Well, Potter, I think, suggested it, and the

entrymen agreed to it. They talked around among themselves.

Q. The entrymen agreed to it, yes. It was mutually agreed, then, between the entrymen and Mr. Potter that you should send the final receipts to Mr. Jones?

A. Yes.

Q. There was nothing unusual about that, was there?

A. No, there was not.

Q. When do you say that was, Mr. Wade, or did you fix the time?

A. These proofs were made, if I remember correctly now, along the first part of September, 1902. It is about a little over two months after I went into the office.

Q. Was that the only batch of proofs that you took?

A. Oh, no. I took hundreds of proofs in the county. I hadn't taken many before that—very few. But then after that, I took—in fact I took thousands of proofs.

Q. Well, from other people.

A. Yes.

Q. People generally in that community, instead of going to Oregon City, went to the County Clerk to make their final proof?

A. Yes, the majority of them did. There were some made proof in Oregon City, but the majority of the proofs were made before the Clerk.

Q. That is, from that vicinity?

A. Yes.

REDIRECT EXAMINATION.

Q. Were all of these old soldiers, do you know? Were all of them old soldiers that you have reference to, these entrymen?

A. You man that was there that day?

Q. Yes.

A. Yes.

Witness excused.

Warren R. Hall, a witness called on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Mr. Hall, where do you live?

A. Siletz, Oregon.

Q. How long have you lived at Siletz, Oregon?

A. Since April 23, 1901.

Q. And have you lived there continuously since?

A. Yes, sir.

Q. What office, if any, did you hold in 1901?

A. Postmaster there.

Q. How long were you postmaster at Siletz?

A. I am still postmaster there.

Q. How far is Siletz from the Siletz Reservation?

A. Well, it is right on the Siletz Reservation, the agency, ten miles north of Toledo.

Q. Do you recall the time when a number of old soldiers came there in the fall of 1900 and the spring of 1901 and '02?

A. I remember seeing them there in 1901, in the spring.

Q. Where is the Roots postoffice?

A. That was about 11 or 12 miles down the river from the Siletz postoffice.

Q. Do you know a man by the name of Anthony Gannon?

A. I know of such a man. I don't know as I would recognize him now.

Q. Was he a resident and inhabitant of Siletz at any time?

A. Well, no, he had some mail come there once or twice.

Q. And where would the mail be re-delivered from Siletz?

A. Generally forwarded back to Portland.

Q. To whom?

A. Well, there was some that was forwarded to W. N. Jones, in care of him, Portland, Oregon.

Q. At whose request were they mailed to W. N. Jones?

A. Why, Bert Blauvelt, I believe.

Q. Bert Blauvelt?

A. Yes, sir.

Q. Who is Bert Blauvelt?

A. He was a man that was in there during 1902, along about that time.

Q. Where is he now?

A. I could not say.

Q. What was he doing then?

A. I believe he was working for Mr. Jones down in the woods.

Q. Do you know a man by the name of William Teghtmeier?

A. Well, there was a number of those people. I don't know as there was Meiers.

Q. Would you be able to say whether he was at any time a resident or inhabitant of Siletz since 1900 or 1901?

A. No, he was not, to my knowledge, an inhabitant.

Q. Do you know a man by the name of Richard Depue?

A. I have heard of him.

Q. Was he at any time a resident or inhabitant of Siletz?

A. No. He may have been there a day or two at a time.

Q. Do you know a man by the name of Joseph Gillis?

A. I have heard of him, too.

Q. Do you know whether he was at any time since 1900 a resident or inhabitant of Siletz?

A. No, sir.

Q. Do you know a man by the name of Edward Brigham?

A. I have heard of him.

Q. Was he at any time a resident or inhabitant of Siletz since 1900?

A. No.

Q. Do you know a man by the name of Thomas Jonson?

A. No, I don't remember Jonson.

Q. Was he at any time a resident or inhabitant of Siletz since 1900 or 1901?

A. Not that I know of.

Q. Do you recall what was done with their mail, if their mail came to Siletz?

A. Well, the only thing I can recall was that there was a bunch of mail came from the Land Office there, and that Mr. Blauvelt gave me a list of the names and asked me to forward them to Portland, care of W. N. Jones.

Q. A bunch of mail from the Land Office, you say?

A. Yes.

Q. What Land Office?

A. Well, Oregon City. They was franked envelopes.

Q. Did any of those names I mentioned trade with you, or have any business with you, or patrons of that postoffice?

A. No.

CROSS EXAMINATION.

Questions by Mr. Hall:

Q. There were a great many settlers came in

there after you became postmaster, wasn't there?

A. Yes, sir.

Q. A great many homesteaders?

A. Yes, sir.

Q. Do you remember them all?

A. Well, I can recall a great many of them. A great many of them did business with us there, and lived there on their claims.

Q. And wasn't it up to, between 1901 and 1905 there were a great many there?

A. Yes, sir.

Q. And isn't it a fact that there was a great deal of mail came there from the Oregon City post-office to people that you didn't know, settlers?

A. Well, yes, there was a great many people would leave their forwarding address too, for their mail when they would go out.

Q. Yes, they would file upon their homestead and give their address as Toledo—were you at Toledo?

A. No, sir, at Siletz.

Q. At Siletz?

A. Yes, sir.

Q. And then give a forwarding address?

A. Yes, sir.

Q. And isn't it a fact that you forwarded a great many, several hundred of those, probably, back in that way?

A. Yes, sir.

Q. Those were people, were they not, who were

taking up homesteads, and were making visits to their homesteads?

A. Yes, sir.

Q. And who had not become permanent settlers in that community?

A. Yes.

Q. There wasn't anything specially different between what was done in these cases, and what was done in a vast number of other cases, was there?

A. No, sir.

Witness excused.

Mr. Goldstein: I will at this time read the deposition of H. L. Sisler.

Deposition read.

(Omit Title.)

In pursuance of a subpoena issued in the above-entitled cause, H. L. Sisler appeared before United States Commissioner Robt. W. McClelland at 1211 American Bank building, Seattle, Washington, on the 25th day of November, 1918, at nine o'clock a. m.

The Government appearing by Mr. Barnette Goldstein, Assistant United States Attorney for the District of Oregon;

The defendant appearing in person and being represented by Mr. John H. Hall.

Whereupon the said H. L. Sisler was by the Commissioner duly sworn to tell the truth, the whole truth, and nothing but the truth in his testi-

mony about to be given, and the following proceedings were had:

Henry L. Sisler, produced as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Goldstein:

Q. State your name in full, please.

A. H. L. Sisler.

Q. Where do you live?

A. Seattle, Washington.

Q. How long have you lived there?

A. Since January, 1905.

Q. And prior to that time where did you live?

A. Portland, Oregon.

Q. How long did you live there?

A. About five years.

Q. Do you know the defendant, Willard N. Jones?

A. I do.

Q. Where and when did you first become acquainted with him?

A. I should say that it was in the early part of 1900; the year that I came to Portland.

Q. Do you remember what part of that year?

A. I cannot hardly call to mind exactly the date, no.

Q. I mean was it in the spring or summer or fall of 1900?

A. I came to Portland in May, 1900.

Q. And you met him how soon after that?

A. I say within a month or so.

Q. And from that time did you become well acquainted with him?

A. I did.

Q. And that relationship continued until you left for Seattle?

A. Yes, sir.

Q. In 1905, I believe?

A. Yes, sir.

Q. Did you have any conversation with him at any time concerning the conveying to you of some timber lands for him?

A. I did.

Q. When did you have that conversation?

A. I would like to state, Mr. Goldstein, that this was, of course, as you can readily see, a good many years ago. I don't believe that I can determine the month and the day.

Q. Well, approximately when, Mr. Sisler?

A. Well, sir, I don't know that I can answer that. I presume that my testimony in the case there would cover it; and really it is the best evidence, and the best testimony that I can give today would be following that closely.

Q. State the conversation, if you please.

A. Between Mr. Jones and myself?

Q. Yes, sir.

A. Why, to the best of my recollection at this

time, Mr. Jones asked if I had any objection to holding title to some property that he had in Oregon.

Q. What did you say?

A. I gave my consent to it.

Q. Did you have any other conversation with him about it after that?

A. I think nothing until the transfer was later made of the property.

Q. Did you ever receive the deeds?

A. I did—well, let me see, if I signed deeds—

Q. No, did you ever see the deeds to you?

A. No, I did not.

Q. Do you know whether the deeds were made out to you?

A. I have no personal knowledge of that fact, but I presume they were, because later the deeds were signed by myself and wife.

Q. Reconveying it?

A. Reconveying the property.

Q. To whom?

A. I can't call to mind the name now.

Mr. Hall: The deeds would be the best evidence.

The witness: I don't recall who it was.

Q. Did you have any conversation as to where the lands were located?

A. I don't think that I did, Mr. Goldstein.

Q. Did he tell you where the lands were located?

A. I don't think so.

Q. You testified, did you, at the criminal trial

where the present defendant was then defendant?

A. I did, yes, sir.

Q. And about this matter now?

A. Very same matter.

Q. Do you remember having testified at that time as follows: "Q. Now, then, did you have another conversation with him about it after that? A. Yes, sir, we had. We must have had another conversation a little later when he told me where the lands were located, because I recall that he said where they were located or the district in which they were located. That is all. Q. Where did he say they were? A. He said they were in the Siletz country." Do you recall that?

A. Frankly, I can't recall that particular testimony, but I have no doubt it is correct, if it is in the former testimony, I will— .

Q. Well, then, this refreshes your recollection to the extent that the conversation that you described did take place as stated by you at the former trial?

A. I have no doubt that is correct, Mr. Goldstein.

Q. Now, did he ever tell you whether he put the property in your name or not?

A. Why, I think that he did, yes.

Q. Did he tell you how many pieces there were?

A. If he did, I don't recall it now.

Q. Do you recall any further conversation with him after that concerning this transaction which

you have already testified—that is, to conveying the property to you?

A. I don't just get the question, Mr. Goldstein. Will you repeat that, please?

Q. Do you recall any further conversation with him after that concerning this transaction which you have already testified—that is, to having the property conveyed to you?

A. Well, I hardly know. The records there will be the best evidence that I can give at this time.

Q. I beg your pardon?

A. I say the records of the trial there would be the best evidence that I could give at this time.

Q. Where was that conversation had—that is, the first conversation when Jones asked you if he could put certain lands in your name, and you told him he could?

A. I should say that it was either at our office—at my office there in Portland or at my house. I am not sure. I am not clear about that.

Q. Where were you living at that time?

A. I was living on Ross Street in Portland, as I remember it.

Q. Now, Mr. Sisler, will you testify as to whether or not you ever saw those deeds reading to you as grantee?

A. I am pretty positive that I never saw the deeds, Mr. Goldstein.

Q. Do you remember being told by him as to

whether or not he finally did convey or finally did have conveyed to you the land in your name?

A. My recollection on that point is that he did tell me that he conveyed the property to me.

Q. You testified, I think, to having deeds brought to you for your signature—that is, for you to reconvey?

A. I testified to that.

Q. Do you remember what took place at that time when those deeds were brought to you? In the first place, who brought those deeds to you for your signature?

A. Why, I presume Mr. Jones did.

Q. How many deeds were there? Do you recall?

A. No, I cannot recall how many deeds there were—whether there was more than one or not—at this time.

Q. Do you remember the name of the grantee? Was it Wetmore, of Warren, Pennsylvania?

A. I believe it was a Pennsylvania party. Now, that is about as far as my memory goes.

Q. Do you remember how many acres of land there were—how many pieces?

Mr. Hall: The defendant interposes an objection to this class of testimony for the reason that it is not the best evidence—that a deed or a certified copy of the deed would be the best evidence as to who the grantee was and the number of acres therein contained.

Mr. Goldstein: Mr. Hall, would you have any

objection, then, to reading into the record the deed signed by him and wife to Wetmore, of Warren, Pennsylvania, which was read into the previous record?

Mr. Hall: Not except as to the materiality. The defendant will not object to the introduction or reading into the record of a paper which purports to be a copy of the deed conveying the lands in question from the witness, provided that plaintiff will later, if required, substitute either a certified copy or the original.

Mr. Goldstein: The Government proposes and will do that. At this time for the purpose of clearing the record, I desire to read this deed into the record with the assurance that a certified copy of the deed will later be introduced in evidence at the trial.

Whereupon it was agreed between counsel that certain deeds be read in evidence.

Mr. Goldstein: The copies in question are: A purported copy of a deed dated August 5, 1903, from Edward C. Brigham and Aletta M. Brigham, of Portland, to H. L. Sisler, of Portland, recorded August 11th, 1903, in Lincoln County; copy of a deed dated November 13, 1903, from John L. Wells and V. A. Wells, to H. L. Sisler, recorded November 18th, 1903, in Lincoln County; copy of a deed dated the 23rd day of December, 1902, from Henry Yeomans, otherwise known as Thomas Johnson, and wife, to H. L. Sisler, recorded December 30th, 1902,

in Lincoln County; copy of a deed dated December 16th, 1904, from H. L. Sisler and wife to Edward D. Wetmore, of Warren, Pennsylvania, recorded February 21, 1905, in Lincoln County; and deed dated June 6th, 1903, from William Teghtmeier and wife, to H. L. Sisler, recorded June 16th, 1903, in Lincoln County.

"KNOW ALL MEN BY THESE PRESENTS, that we, Edward C. Brigham and Aletta M. Brigham, husband and wife, of Portland, County of Multnomah, State of Oregon, in consideration of Two Hundred Dollars, to us paid by H. L. Sisler, of Portland, County of Multnomah, State of Oregon, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do GRANT, BARGAIN, SELL AND CONVEY unto said H. L. Sisler, his heirs and assigns, all the following bounded and described real property, situated in the County of Lincoln and State of Oregon: The Southeast quarter of Southeast quarter of Section Fourteen, South half of Southwest quarter and Northeast quarter of Southwest quarter of Section Thirteen, in Township Nine, South of Range Ten West, containing 160 acres, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and also all our estate, right, title and interest, in and to the same, including dower and claim of dower.

TO HAVE AND TO HOLD the above described and

granted premises unto the said H. L. Sisler, his heirs and assigns forever. And we, Edward C. Brigham and Aletta M. Brigham, the grantors above named, do covenant to and with H. L. Sisler, the above-named grantee, his heirs and assigns, that the above granted premises are free from all incumbrances except a certain mortgage of date the 26th of December, 1901, in favor of W. N. Jones for the sum of $720.00 with interest at 10 per cent, and that we will and our heirs, executors and administrators shall warrant and forever defend the above granted premises and every part and parcel thereof, against the lawful claims and demands of all persons whomsoever, claiming by, through or under us, except the above named mortgage.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 5th day of Aug., A. D. 1903.

(Seal) EDWARD C. BRIGHAM,

(Seal) ALETTA M. BRIGHAM.

Signed, sealed and delivered in the presence of us as witnesses.

E. E. Coovert.

Martha M. Irvwin.

State of Oregon,

County of Multnomah, ss.

THIS CERTIFIES that on this 5th day of Aug., A. D. 1903, before us, the undersigned, a notary public in and for said county and state, personally appeared the within named Edward C. Brigham and Aletta M. Brigham, his wife, known to me to be

the identical persons described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and notarial seal the day and year last above written.

(Seal) E. E. COOVERT,
Notary Public for Oregon.

Filed for record on the 11th day of August, A. D. 1903, at 9 o'clock A. M.

IRA WADE,
Recorder of Conveyances.
By Lee Wade, Deputy."

"KNOW ALL MEN BY THESE PRESENTS, that John L. Wells and V. A. Wells, husband and wife, of Portland, County of Multnomah, State of Oregon, in consideration of Nine Hundred and Sixty Dollars, to us paid by H. L. Sisler, of ..... County of ..... State of Oregon, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant, bargain, sell and convey unto said H. L. Sisler, his heirs and assigns, all the following bounded and described real property, situated in the County of Lincoln and State of Oregon: The S. ½ of S. E. ¼ and Lots 1 and 2 of Sec. 10, and N. E. ¼ of N. E. ¼ of Sec. 15, T. 9 S., R. 10 W. of W. M., containing 164.12 acres, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any

wise appertaining, and also all our estate, right, title and interest, in and to the same, including dower and claim of dower.

To Have and to Hold the above described and granted premises unto the said H. L. Sisler, his heirs and assigns forever. And we, John L. Wells and V. A. Wells, the grantors above named, do covenant to and with H. L. Sisler, the above named grantee, his heirs and assigns, that the above granted premises are free from all incumbrances made, executed or suffered by said grantor and that we will and our heirs, executors and administrators shall warrant and forever defend the above granted premises and every part and parcel thereof, against the lawful claims and demands of all persons whomsoever, claiming or to claim the same by, from, through or under said grantor.

In Witness Whereof, we have hereunto set our hands and seals this 13th day of November, A. D. 1903.

Signed, sealed and delivered in the presence of us as witnesses.

W. H. Wells.

Geo. Sorenson.

(Seal) John L. Wells,

(Seal) V. A. Wells.

State of Oregon,

County of Multnomah, ss.

This Certifies that on this 13th day of November, A. D. 1903, before me, the undersigned, a notary

public in and for said county and state, personally appeared the within named John L. Wells and V. A. Wells, his wife, known to me to be the identical persons described in and for executed the within instrument, and acknowledged to me that they executed the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal the day and year last above written.

(Seal) GEO. SORENSON,
Notary Public for Oregon.

Filed for record on the 18th day of November, A. D. 1903, at 9 o'clock A. M.

IRA WADE,
Recorder of Conveyances.
By ....., Deputy."

"KNOW ALL MEN BY THESE PRESENTS, that Henry Yeomans, otherwise known as Thomas Johnson, and Hannah Yeomans, his wife, of Portland, County of Multnomah, State of Oregon, in consideration of One Thousand Dollars, to them paid by Henry L. Sisler, of Portland, County of Multnomah, State of Oregon, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant, bargain, sell and convey unto said Henry L. Siler, his heirs and assigns, all the following bounded and described real property, situated in the County of Lincoln and State of Oregon: The west half of the southwest quarter, the southeast quarter of the southwest quarter of Sec-

tion 14, and the northeast quarter of the northwest quarter of Section 23, in Township 9, south of Range 10 West, of W. M., containing 160 acres; (The land conveyed by this instrument was taken by the said Henry Yeomans under the homestead laws of the United States, under the name of Thomas Johnson; and the grantors above named do hereby covenant to and with the said Henry L. Sisler, his heirs, administrators and assigns, that they are the owners in fee of said premises and have good right to convey the same.) Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and also all their estate, right, title and interest, in and to the same, including dower and claim of dower.

To Have and to Hold the above described and granted premises unto the said Henry L. Sisler, his heirs and assigns forever. And Henry Yeomans and Hannah Yeomans, his wife, the grantors above named, do covenant to and with the said Henry L. Sisler, the above named grantee, his heirs and assigns, that the above granted premises are free from all incumbrances, made, executed or suffered by said grantor, and that they will and their heirs, executors and administrators shall warrant and forever defend the above granted premises and every part and parcel thereof, against the lawful claims and demands of all persons whomsoever, claiming or to claim the same by, from, through or under said grantor.

IN WITNESS WHEREOF, they have hereunto set their hands and seals this 23rd day of December, A. D. 1902.

(Seal) HENRY YEOMANS,
(Alias Thomas Johnson)

(Seal) HANNAH YEOMANS.

Signed, sealed and delivered in the presence of us as witnesses:

Thad S. Potter,

Geo. Sorenson.

State of Oregon,

County of Multnomah, ss.

THIS CERTIFIES that on this 23rd day of December, A. D. 1902, before me, the undersigned, a notary public in and for said county and state, personally appeared the within named Henry Yeomans and Hannah Yeomans, his wife, known to me to be the identical persons described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal the day and year last above written.

(Seal) THAD. S. POTTER,
Notary Public for Oregon.

Filed for record on the 30th day of Dec., 1902, at 10 o'clock A. M.

IRA WADE,
Recorder of Conveyances.

By Lee Wade, Deputy."

"KNOW ALL MEN BY THESE PRESENTS, that we, H. L. Sisler and Inez Sisler, husband and wife, of Portland, County of Multnomah, State of Oregon, in consideration of one dollar and other valuable considerations to us paid by Edward D. Wetmore of Warren, County of Warren, State of Pennsylvania, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant, bargain, sell and convey, unto said Edward D. Wetmore, his heirs and assigns, all the following bounded and described real property, situated in the County of Lincoln and State of Oregon: The west half of southwest quarter, southeast quarter of southwest quarter of Section Fourteen, and northeast quarter of northwest quarter of Section Twenty-three, in Township Nine south of Range Ten west, containing one hundred and sixty acres; also southeast quarter of southeast quarter of Section Fourteen, south half of southwest quarter and northeast quarter of southwest quarter of Section Thirteen in Tp. Nine south Range, Range Ten west of W. M., containing one hundred and sixty acres also; Lots one and two and south half of southeast quarter of Section ten and northeast quarter of northeast quarter of Section fifteen in Tp. Nine south of range ten west of W. M., containing one hundred and sixty-four and twelve one hundredths acres; also south half of northeast quarter and north half of southeast quarter of section ten in township nine south of range ten west of W. M.,

containing one hundred and sixty acres. Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and also all our estate, right, title and interest, in and to the same, including dower and claim of dower.

To Have and to Hold the above described and granted premises unto the said Edward D. Wetmore, his heirs and assigns forever. And we, H. L. Sisler and Inez Sisler, the grantors above named, do covenant to and with Edward D. Wetmore, the above named grantee, his heirs and assigns, that the above granted premises are free from all incumbrances made, executed or suffered by said grantor .... and that we will and our heirs, executors and administrators shall warrant and forever defend the above granted premises and every part and parcel thereof, against the lawful claims and demands of all persons whomsoever, claiming or to claim the same by, from, through or under said grantor.

In Witness Whereof, we have hereunto set our hands and seals this 16th day of December, A. D. 1904.

(Seal) H. L. Sisler.

(Seal) Inez H. Sisler.

Signed, sealed and delivered in the presence of us as witnesses:

W. N. Jones,

Fred A. Kribe.

State of Oregon,
County of Multnomah, ss.

THIS CERTIFIES that on this 16th day of December, A. D. 1904, before me, the undersigned, a notary public in and for said county and state, personally appeared the within named H. L. Sisler and Inez Sisler, his ....., known to me to be the identical persons described in and who executed the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year last above written.
(Seal) WILLARD N. JONES,
Notary Public for Oregon.

Filed for record on the 21st day of February, A. D. 1905, at 9 o'clock A. M.

IRA WADE,
County Clerk.

By Lee Wade, Deputy."

"Know all men by these presents, that William Teghtmeier and Loise Teghtmeier, his wife, in consideration of Two Hundred ($200) Dollars, to us paid by H. L. Sisler, do hereby remise, release and forever quit claim unto the said H. L. Sisler, and unto his heirs and assigns all our right, title and interest in and to the following described parcel of real estate, situate in County of Lincoln, State of Oregon, to-wit:

South half of the northeast quarter and north half of the southeast quarter of section 10 in town-

ship 9 south of range 10 west of W. M., containing 160 acres.

To have and to hold the same, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining to the said H. L. Sisler and to his heirs and assigns forever.

In witness whereof, we have hereunto set our hands and seals this sixth day of June, A. D. 1903.

(Seal) WILLIAM TEGHTMEIER,

(Seal) LOISE TEGHTMEIER.

Signed, sealed and delivered in the presence of us as witnesses:

C. C. Wells.

J. S. Wells.

State of Oregon,

County of Multnomah, ss.

This certifies that on this 6th day of June, A. D. 1903, before me, the undersigned, a notary public in and for said county and state, personally appeared the within named William Teghtmeier and Loise Teghtmeier, known to me to be the identical persons described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily, and without fear, coercion or compulsion from anyone.

In testimony whereof, I have hereunto set my hand and notarial seal the day and year last above written.

(Seal)

J. L. WELLS,
Notary Public for Oregon.

(Recorded June 16th at 12 o'clock A. M., 1903.)

IRA WADE,

Clerk.

By Lee Wade, Deputy."

Q. (Mr. Goldstein continuing examination) Mr. Sisler, at the time that you made these deeds, was any consideration paid to you?

A. No, sir.

Q. Did you have any interest in the matter whatsoever?

A. I did not.

Q. You knew nothing about the property or the grantees except what Mr. Jones told you?

A. Nothing.

Q. As I understand, Mr. Sisler, you paid no money for the property conveyed to you, and you received no money for the property conveyed by you?

A. That is right.

Q. It was, then, entirely and purely a friendly transaction for and on behalf of the defendant, Mr. Jones—is that correct?

A. That is right.

CROSS EXAMINATION.

By Mr. Hall:

Q. Mr. Sisler, how well did you know Mr. Jones at the time of the date of these conveyances?

A. Well, I considered Mr. Jones and my family as very close friends — personal friends — visited

back and forth at each others houses. We knew him very well.

Q. You saw him often?

A. Oh, yes, I saw him frequently.

Q. And based upon your relationship and acquaintance with him, you had no hesitancy in taking these deeds and accepting this trust from Mr. Jones, did you?

A. No, I had no hesitation in the matter.

Q. Your acquaintanceship or association with Mr. Jones was such that you had no doubt as to the legitimacy of the transaction?

A. No, I had no hesitancy about it being a legitimate transaction at all.

Q. In other words, you had the utmost confidence in Mr. Jones' integrity and honesty?

A. Yes, I did.

Q. Was there any other lands conveyed to you during that time by Mr. Jones other than those that have been enumerated here?

A. I think these were all, Mr. Hall. I don't recall any other lands that he conveyed to me. You mean that he conveyed to me?

Q. That he caused to be conveyed to you?

A. I think those pieces were the only ones.

Q. If there are any others you don't recall them at this time?

A. I do not.

REDIRECT EXAMINATION.

By Mr. Goldstein:

Q. Did you know or did you not know that the property conveyed to you was mortgaged?

A. I didn't know anything about it, Mr. Goldstein.

Q. Was there anything said about any mortgages on the property?

A. Not that I recall.

Q. Did you understand that you were to assume any deficiency judgments in the event the mortgages were foreclosed?

A. I think not.

Q. Was anything said about that?

A. No, sir.

Q. So whether or not the property was mortgaged or incumbered you don't know?

A. I didn't at that time, no.

Q. Did Mr. Jones tell you at the time these conveyances were made?

A. No, sir.

RECROSS EXAMINATION.

By Mr. Hall:

Q. Under your arrangement with Mr. Jones he had authority or your consent to accept these deeds from the grantors and to have them recorded in your name, had he?

A. I gave Mr. Jones permission to transfer the

property to me—to have the property turned over to me.

Q. And to do anything that was necessary for that purpose?

A. Yes, I gave him that permission.

REDIRECT EXAMINATION.

By Mr. Goldstein:

Q. Did you know any of the grantees that you conveyed the property to?

A. That I conveyed the property to? In other words, this man in Pennsylvania—Wetmore?

Q. Yes?

A. I didn't know him at all.

Q. Did you know the parties you bought from—that is, the parties who conveyed the property to you?

A. I didn't know them at all.

Q. Did you record the deeds?

A. I did not.

Q. The entire transaction, then, was handled by Mr. Jones and for his benefit?

A. Yes, sir.

Q. You received nothing for it, I think you said?

A. I received nothing.

(Witness excused.)

Mr. Goldstein: If the court please, Charles F. Soule was subpoenaed by the Marshal under date of November 12, to appear here on the 2nd day of December at 9 o'clock in the morning. The Marshal

made due return of service of subpoena upon him. The witness has not appeared at any time since then, and he resides here in the City of Portland.

Court: Has he been here during the week?

Mr. Goldstein: Not at all.

Mr. Haney: We haven't seen him if he has.

Court: Where does he live?

Mr. Goldstein: He lives at 191 11th street, Portland. I would like to have a bench warrant issued.

Court: He was subpoenaed here in the city?

Mr. Goldstein: Yes, your Honor. The Marshal has made return.

Court: Very well; let a bench warrant issue.

T. I. Laughlin, a witness called on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Mr. Laughlin, where do you live?

A. 871 East Madison street, Portland.

Q. How long have you lived in the State of Oregon?

A. Ten years.

Q. What is your business or occupation?

A. Timber cruiser.

Q. Timber cruiser?

A. Yes, sir.

Q. How long have you been a timber cruiser?

A. About 40 years.

Q. About 40 years. Were you requested or di-

rected to make a cruise of certain timber lands embraced in the Siletz Reservation, open to homestead entry?

A. I was requested to make an examination of certain lands on the Siletz River a short time ago, or near there, on Sections 3 and 4, Township 9 South, Range 10 West.

Q. On Sections 3 and 4, of Township 9 South, Range 10 West?

A. Yes, sir.

Q. When did you make this cruise?

A. The latter part of last month.

Q. Did you examine the north half of the north half of Section 4?

A. Yes, sir; Lots 1, 2, 3 and 4.

Q. Lots 1, 2, 3 and 4?

A. Yes.

Q. For the purpose of identification, I think this is the same as the Joseph Gillis claim. Do you know what claim it was? That is for the purpose of identification.

A. No, I didn't.

Q. What is the character of the land that you found?

A. With the exceptions of the northwest of the northwest, or Lot 4, it is very steep and rough—broken.

Q. Did you find any timber on this section?

A. I did.

Q. This particular one that I have reference to, the north half of the north half of Section 4?

A. Yes, sir.

Q. What did the timber cruise?

A. My report is before you.

Mr. Hall: If the court please, defendant objects to this class of testimony at this time, assuming it is for the purpose of establishing the present value of the land by showing the amount of timber there is on the land. The rule is well established by the Supreme Court of the United States and Federal Courts that the measure of damages, if any, that the party would be entitled to is fixed as of the time of the transfer; that is, as of the time when patent issued from the United States—the value of the land at that time would be the measure. Now, I don't think there is any doubt about that, because that is the measure of damages that is fixed as between individuals: That if a party, by deceit or otherwise, is induced to part with his land, the value of the land at the time he parted with it is the measure of damages, less whatever he has received for it. It is not permissible to wait a number of years, when the lands may either have increased in value to a great amount, or whether they have decreased in value; but the measure is as to what was the value, what was the loss of the plaintiff at the time the transaction took place. Now, it might be that a man, or the Government, we will say, was defrauded out of land

in the same way by a homestead entryman, and that afterwards the land was improved by buildings, by cultivation, or even by building a town site, or anything else on it. The Government could not recover the value of the land at the time that the action was tried, or even at the time the suit began; but they are limited to the value of the land at the time that the transfer was made. I have authorities upon that, if the court wishes to listen to them.

Court: Do you controvert that?

Mr. Haney: Yes, your Honor, we controvert it; but it seems to me it is premature. Before we get down to the question whether the measure of damages is 1901 or 1912 or this time, we ought to be permitted to prove what amount of timber is on there. It seems to me counsel is raising this question before we are ready for it?

Court: You are not trying to prove by this witness the value?

Mr. Haney: No. We may later offer to prove by him the values, but at this time we are only trying to fix by this witness the amount of timber that is there, by this cruise.

Court: Well, I will decide it when we get to that. You may show the amount of timber that is there.

Mr. Hall: There may be a certain amount of accession from 1902 to the time he examined it.

Mr. Haney: You don't seriously contend that

the amount of timber is any greatly different now than it was 16 years ago?

Mr. Hall: It should be. The trees have been growing for 16 years.

Mr. Haney: Yes, they have been growing some.

Mr. Goldstein: They have been growing for 6,000 years.

Mr. Hall: I never saw a tree that old.

Q. Are these the reports you made of the cruise you testified to?

A. Yes, sir, they are.

Court: Does that involve only this one claim?

Mr. Goldstein: Three of these nine claims he will testify to.

Court: You have spoken so far of the Gillis claim.

Mr. Goldstein: Yes, I am giving him his report, so that he will be able to testify as to what appeared on the Gillis claim.

Court: What is the amount you cruised on the Gillis claim?

A. I didn't foot that up. I can tell quite readily. I didn't foot it up as the Gillis claim. I cruised it as a body, each forty separately.

Mr. Hall: We desire an exception to the court's ruling.

Court: Very well. Each forty. Oh, very well, you may give each forty.

Q. I will tell you, Mr. Laughlin, you might state now to the stenographer and to the jury, just what

lands you cruised, and then we will discuss the names of the claimants later. Just tell what lands you cruised, the sections and lots.

Court: I think you better keep the names of the entrymen along with it, so that the jury will have it as we go. As you have gotten this Gillis claim, he better give the figures on that.

Q. Well, give the amount of the cruise of the north half of the north half of Section 4.

A. By forties?

Q. The total.

Court: Well, give it by forties, and then the total.

A. We will commence with Lot 1, then. The total on that forty—well, I will read the different classes of timber: Yellow fir, 1,100,000; spruce, 375,000; cedar, 20,000; hemlock, 300,000; total on that forty, 1,795,000. Lot 2, yellow fir, 1,150,000; spruce, 150,000; cedar, 20,000; hemlock, 352,000; total, 1,645,000. Lot 3, yellow fir, 1,600,000; spruce, 175,000; cedar, 20,000; hemlock, 400,000; total, 2,195,000. Lot 4, yellow fir, 2,200,000; spruce, 75,000; cedar, 10,000; hemlock, 300,000; total, 2,585,000.

Q. Now, what is the total on that whole claim of the north half of the north half of Section 4?

Juror: Is that the Gillis claim?

Mr. Goldstein: Yes, the Gillis claim.

A. 8,220,000.

Court: Go on to the next claim.

Q. Now, did you also cruise the west half of

the northwest quarter of Section 3, and the southeast quarter of the northeast quarter and the northeast quarter of the southeast quarter of Section 4?

A. Yes, sir.

Mr. Goldstein: And that claim is the claim of Oliver I. Conner, embraced within the complaint.

Mr. Hall: Our objection goes to all of this, your Honor, without necessarily taking exceptions?

Court: Yes, you may have objection and exception to all of this.

A. Lot 4, the northwest of the northwest, Section 3, 9 South, 10 West: Yellow fir, 975,000; spruce, 220,000; cedar, 40,000; hemlock, 370,000; total, 1,605,000. Southwest quarter of the northwest quarter of Section 3: Yellow fir, 1,020,000; spruce, 230,000; cedar, 150,000; hemlock, 260,000; total, of 1,660,000. The southeast quarter of the northeast quarter Section 4, 9 South, 10 West: Yellow fir, 1,025,000; spruce, 200,000; cedar, 175,000; hemlock, 225,000; total, 1,625,000. The northeast quarter of the southeast quarter Section 4: Yellow fir, 975,000; spruce, 200,000; cedar, 175,000; hemlock, 225,000; total, 1,575,000.

Q. Now, what is the total of the entire claim?

A. The total on that claim is 6,465,000.

Q. Now, did you cruise the north half of the southwest quarter, and the southeast quarter of the southwest quarter, and the southwest quarter of the southeast quarter Section 3 of that township?

A. Yes, sir.

Q. That is the claim of Richard D. Depue. What is the amount of the cruise you found on that claim?

A. The northeast quarter of the southwest quarter Section 3: Yellow fir, 1,100,000; spruce, 275,000; cedar, 150,000; hemlock, 300,000; total, 1,825,000. The northwest quarter of the southwest quarter: Yellow fir, 1,475,000; spruce, 275,000; cedar, 300,000; hemlock, 200,000; total, 2,250,000. The southeast quarter of the southwest quarter: Yellow fir, 1,180,000; spruce, 260,000; cedar, 125,000; hemlock, 150,000; total, 1,715,000. The southwest quarter of the southeast quarter: Yellow fir, 1,400,000; spruce, 180,000; cedar, 60,000; hemlock, 200,000; total, 1,840,000.

Q. Now, what is the total of the entire claim?

A. 7,630,000 total.

Q. How long do you say you have been cruising?

A. About 40 years.

Q. Could you tell whether it was old growth or new growth timber that you cruised?

A. Yes, sir.

Q. What was it?

A. The fir on this tract of timber is all old growth; very old.

Q. Could you tell by looking at it what was the condition of this timber in 1902?

A. Why, I should say that it had not changed much since that time, except the deterioration by age, or something of that kind.

Q. What would be the quality of the growth

now, as compared with the quality of the growth then—any difference?

A. About the same.

Q. And about the same amount of timber now as it was then?

A. Well, I would say that the old growth yellow fir had not held its own. Other timbers there perhaps have grown to some extent. The cedar especially is a quick growing timber. The spruce and old growth fir are past ripe.

Q. So there would be no appreciable difference in the amount of timber, would there?

A. Well, that might be a difficult matter to determine in that class of timber. It is hard to figure what the deterioration is.

Q. What would you say as to the condition of the land as to being fit for grazing?

A. As a whole, it would be what I would call fairly good grazing land after the timber was taken off.

Q. Would you be able to say what the value of the timber was in 1902?

A. No, sir.

Q. In 1912?

Mr. Hall: We object to that, your Honor.

Court: I will have to hear your argument on that.

Witness excused for the present.

Frank L. Bailey, called as a witness on behalf

of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Mr. Bailey, what is your business?

A. Timber cruiser.

Q. How long have you been a timber cruiser?

A. More or less for 35 years.

Q. In this state?

A. In this state and Washington, Montana and and Idaho.

Q. Were you requested to make a cruise of certain timber land in the Siletz Reservation, in Township 9 South, Range 10 West, Willamette Meridian?

A. Yes, sir.

Q. Did you cruise the south half of the northwest quarter and the southwest quarter of the northeast quarter, and the northwest quarter of the southwest quarter, section 13 of that township?

A. I did.

Q. That is known as the claim of B. S. Hunter. Just tell the court and jury, please, the amount of timber cruise you found on this claim.

A. On the southwest quarter of the northwest quarter I found: Old growth fir, 1,010,000 feet; hemlock, 675,000 feet; spruce, 295,000 feet; cedar, 175,000 feet.

Q. What is the total of that?

A. That is just for one forty. You want the total for his claim?

Court: Give the total for the forty.

A. I haven't got that. I have got the total for the claim, but not for the forty.

Court: Well, go on then, and get the total for the claim.

A. The northwest quarter of the southwest quarter—

Q. Give the total of the claim.

A. Total of the claim: Fir on claim is 4,475,000 feet; hemlock, 1,545,000 feet; spruce, 720,000 feet; cedar, 1,570,000 feet.

Q. Now, what is the total of the claim?

A. 8310,000.

Q. 8,310,000?

A. Feet, yes, sir.

Q. Did you cruise the south half of the northeast quarter and the north half of the southwest quarter, section 10?

A. I did.

Court: Whose claim is that?

Mr. Goldstein: That is the claim of William Teghtmeier.

Q. Now, give the totals of the claim, showing the amount of fir, hemlock, spruce, and cedar.

A. Total Teghtmeier claim: Fir, 7,030,000 feet; hemlock, 945,000 feet; spruce, 610,000 feet; cedar, 260,000 feet.

Q. Now, what does that total?

A. That totals 8,845,000 feet.

Q. That is the total of William Teghtmeier's claim?

A. Yes, sir.

Q. Did you cruise the west half of the southwest quarter and the southeast quarter of the southwest quarter, section 14, and the northeast quarter of the northwest quarter, section 23, of that township?

A. I did.

Q. That is known as the claim of Thomas Johnson. Now, give the totals of the claim.

A. The total, without the different varieties?

Q. No, you can give the different varieties, but give the totals of the claim.

A. Fir, 5,435,000 feet; hemlock, 1,240,000 feet; spruce, 1,525,000 feet; cedar, 540,000 feet. The total for the claim is 8,740,000 feet.

Q. Did you cruise lots 1 and 2, south half of the southeast quarter, section 10, northeast quarter of the northeast quarter, section 15, that township?

A. I did.

Q. That is known as the claim of John L. Wells?

A. Yes, sir.

Q. Now, give the totals of the different items.

A. Fir, 4,645,000 feet; hemlock, 1,055,000 feet; spruce, 1,615,000 feet; cedar, 210,000 feet.

Q. How much is the total?

A. The total is 7,525,000 feet.

Q. Did you cruise the southeast quarter of the southeast quarter, section 14, and the south half

of the southwest quarter, northeast quarter of the southwest quarter, section 13, in that township?

A. I did.

Q. That is known as the claim of Edward Brigham. What is the total of that claim, showing the different varieties?

A. Fir, 7,540,000 feet; hemlock, 1,860,000 feet; spruce, 445,000 feet; cedar, 905,000 feet. The total is 10,750,000 feet.

Q. Did you cruise the east half of the west half of section 11?

A. I did.

Q. That is known as the claim of Anthony Gannon.

A. I cruised that, yes, sir. Fir on that, 5,715,000 feet; hemlock, 935,000 feet; spruce, 235,000 feet; cedar, 625,000 feet. Total, 7,510,000 feet.

Q. What is it, old growth or new growth timber?

A. Principally old growth. There is very little new growth, young growth.

Q. What would you say as to any difference in the amount of timber as between 1902 and the present time?

A. Well, I would imagine it would be better then than it is now.

Q. Would there be any appreciable difference?

A. No, not a great deal, I wouldn't think. It is very old growth timber principally, and deteriorates in quality.

Q. What would you say as to the land being fit for grazing purposes?

A. It would make fair grazing land, if it was cleared and seeded. Otherwise, it would not be worth anything for grazing.

Q. Could you say what the value of this timber would be in 1901 or 1902?

A. Only by hearsay. I am not acquainted with it at all until the last two years. I never had seen it.

Q. Well, do you know what such timber as you cruised now would be worth at that time, in 1901 or 1902?

A. Well, in that locality, I would say 50 cents a thousand probably would be sufficient value for it.

Q. Would you say what the value of the timber was in December, 1904?

Same objection.

A. Not—it would be merely a guess.

Mr. Hall: If that is after the time of the issuance of the patent, I have some authorities on that. In the case of *Pitan v. United States*, 241 Fed. 364, it is held that the Government's rights in actions of this kind are the same as those of an individual who has been defrauded of land. I do not think counsel will dispute that proposition.

(Argument.)

Mr. Goldstein: If the court please, with the consent of the court, I would like to have the appearance of S. W. Williams, Special Assistant to the

Attorney General, entered in the record as appearing for the Government. I would like to have him make the argument to the court with respect to the measure of damages.

(Argument by Mr. Williams.)

(Argument by Mr. Hall.)

Court: I will decide this matter for the present. I think Judge Rudkin has stated the proper rule, the one I shall adopt here; and, in order that you may understand the basis upon which I plant my opinion, I will state the facts in this case; that is to say, some matters that preceded the bringing of this action. This action has been brought late in the proceeding, that is, considering the time in which it might have been brought. When this fraud was perpetrated, if it so proves, the Government had the right of two actions—two proceedings. One was to set aside the patent and regain the land; and the other was to bring an action as this action has been brought, for the damages. It could have brought that at any time after the title passed out of the Government. By bringing the action for damages, it would have been deemed to have waived its right to bring an action to set aside the patent. The case went on without the Government attempting to regain the property, and six years passed, which is the period of the statute of limitation, before the Government attempted to sue at all; and then, the six years having elapsed, it has instituted this simple action for damages for fraud, in which

it is alleged that the land was taken out of its possession, that the title had been procured. So that we must view this action as though it were one simply for damages for fraud in procuring the title to this land, and the measure of damages, I think, should be based upon that condition of affairs.

There is no allegation in this complaint that the defendant has conveyed this land to anybody else, or to innocent purchasers, so that that theory of the case must be laid to one side, and we must take the case as we find it upon the pleadings. Hence I think the proper rule to adopt in that kind of case is the rule stated by Judge Rudkin, in this case of *United States of America v. Edwards et al.* He states that rule to be: "If the Government voluntarily brings suit for damages in a case of this kind" (and that is what the Government has done here), "thus waiving the right to bring suit to set aside the patent, it in effect confirms the title in the patentees, and in such cases I am inclined to the opinion that the damages should be limited to the value of the land at the time of final proof, with interest."

I think that rule seems to be supported by authority, and I will adopt it in this case.

I do not think the rule of personal property damages should apply here at all. The rule in that case, as stated by the Willow Ware Case, is the value of the property at the time the action is

brought, or the value of the property which includes whatever added value the purchaser, or the one procuring the property by trespass, has put upon it, so that it is not only the primary value of the property, but the value in its improved condition.

But that does not apply to real property, where there is a sale of real property, because there is no improved condition here in this case. Of course, there might be improvements put upon real estate; but that is not the rule as to the sale of real estate, or where title has been procured through fraud. I think Judge Rudkin states the rule very well, as I have read it, and I will apply that rule in this case.

Mr. Williams: I understand your Honor to hold that that limits our valuation to the time of final proof?

Court: At the time of final proof, with interest added. That interest is the legal rate, which is six per cent.

Government allowed an exception.

Q. Now, Mr. Bailey, do you know what timber was worth in 1901 and 1902 in the Siletz country?

A. I do not.

Q. How?

A. I do not know.

Court: I thought he said it was worth 50 cents a thousand.

A. I said as by hearsay.

Court: Oh, by hearsay.

A. I said by hearsay.

Mr. Hall: The other witness said by hearsay.

Court: I don't think that would be the best evidence. If he knows the value, he can so testify. That would be proper evidence.

Mr. Hall: If your Honor please, I hardly think that that is a proper method of proving value of homestead claims, which the Government has designated as fit for homesteads, by showing the value of timber, or of streams, or rock quarries, or anything of that kind. The real question is as to what was the market value of those lands, or lands in that vicinity, at that time. I don't think this is the proper way to arrive at it. We object to it.

Court: The Government is entitled to recover what it has lost. If it has lost timber, which it did lose along with the land, if the timber is worth so much, and the land is worth so much, that would be the way to arrive at the value.

Mr. Hall: The timber goes with the land, as a part of the realty, but our idea of that was, what were these quarter sections worth at that time in the market; not what the timber was worth, or what the stone was worth on it; but it is what was the value of the land—what it could be sold for.

Court: Well, I think you can get at it in both ways, if you want to pursue it. You can first take the value of the land in the market, and the value of the timber in the market, and put the two to-

gether, and you have got the value. Or you may take it the other way, and ascertain what a quarter section was worth at the time with that amount of timber on it, in that locality.

Q. Do you know the value of timber generally in 1901 and 1902?

A. Yes, sir, in the West I did.

Mr. Hall: If the court please, I object to that. Timber generally, is too broad entirely. If he knows, he would have to limit it.

Court: He ought to know the value of the timber in that locality.

Mr. Hall: Yes.

Q. Do you know the value of the kind of fir that you cruised in the Siletz country in 1901 and 1902?

Mr. Hall: Whereabouts?

Q. In that country.

A. No, sir, I don't know anything about it in that country.

CROSS EXAMINATION.

Questions by Mr. Hall:

Q. Mr. Bailey, you said that the cruise that you made was about a month ago?

A. It was made from the 15th to the 26th of last month.

Q. You cruised it alone?

A. No, sir.

Q. Who was with you?

A. John P. Savage, Siletz, Oregon.

Q. And you cruised six quarter sections?

A. Yes, sir.

Q. How long did it take you?

A. Nine days.

Q. And how did you cruise it?

A. We double ran it, as the general term is, by going through each forty twice, dividing it into strips forty rods wide, and going through the center of it, cruising with a compass man—Mr. Savage in my case—going through the center of it, keeping the line distance. I was working one side or the other of him, and with him during the run through each forty, and estimating the amount of timber, and the quality and the varieties.

Q. You went through a forty each way?

A. No, not through a forty each way. For instance, I was cruising it north and south, I would run through it twenty rods from the west line probably north, and come back twenty rods from the east line going south, running north and south; not east and west.

Q. North and south of the quarter?

A. Well, through the forty.

Q. Of the forty?

A. Whatever it was; or quarter, if it was a quarter.

Q. But you didn't go all over the forty and look at all the trees?

A. Not to go to every tree, no, I did not.

Q. Well, did you measure the trees?

A. Measure them?

Q. Yes.

A. Not except with my eye.

Q. You just measured the tree with your eye?

A. Yes, sir.

Q. And walked through the forty each way, and then from that determined the amount of fir, hemlock, cedar and spruce there was on there?

A. Yes, sir.

Q. Now, in these strips that you went through, did you count the trees?

A. Generally I would, every twenty rods.

Q. You would count them for twenty rods?

A. Every twenty rods I would make a tally, what we would call a tally, that is, twenty rods of the distance, and estimate the amount of timber that was on that five acre tract; that would be a tract twenty rods one way and forty rods the other.

Q. You didn't count each and every tree, though, on that five acre tract?

A. I might have missed a very few; not many, though.

Q. Did you do that on each of the forties, count the trees?

A. I did.

Q. On a five acre tract?

A. In that way, yes.

Q. Just in that way?

A. Yes.

Q. You estimated from looking at the tree how thick it was, what its diameter was at the butt, and the length of the tree to where the top cut would be, did you?

A. Yes, sir.

Q. And then guessed at the balance from that up?

A. Well, I don't know what you mean by guessing at the balance.

Q. Well, you didn't measure them all?

A. I didn't measure any of them only with my eye. I looked at every tree, though, I counted.

Q. But you only measured with your eye on five acres on each forty.

A. No, I said on every tally. I would make four tallies across a forty. That would be twenty rods to each tally in going across that forty. And I estimated on each one of those across every forty.

Q. Every forty?

A. Yes. That would be eight estimates on each forty.

Q. Eight acres?

A. Eight estimates.

Q. Oh, eight estimates on each forty?

A. Yes.

Q. Now, you say the yellow fir or Douglas fir was old. Was it Douglas fir?

A. Yes, sir.

Q. And that was mature timber?

A. Yes, almost all of it was.

Q. How old was it?

A. That is impossible to tell. I would say an average of five or six hundred years.

Q. Five or six hundred years to the tree?

A. Yes.

Q. You didn't cut any of them and count the rings, did you?

A. Oh, no, no.

Q. They were still growing, weren't they?

A. Yes, sir; still alive, anyway.

Q. What is that?

A. Still alive.

Q. Still alive and growing. And you say that they wouldn't have grown any, in your judgment, in 16 years?

A. Grown any what?

Q. In sixteen years?

A. No, I didn't say that.

Q. Well, they would have changed some in that time, would they not?

A. Yes, certainly.

Q. Now, you take the hemlock, that was of a young growth, wasn't it?

A. Most of it, yes.

Q. The hemlock in that country is of a more recent origin than the Douglas fir, is it not?

A. I would judge so from its appearance.

Q. From its appearance?

A. Yes.

Q. And the cedar is almost more recent?

A. Yes, most of it is, I would judge.

Q. And that would have grown some in that time?

A. Very likely.

Q. Isn't it a fact that there is a good deal of old hemlock that runs two and two and a half feet in diameter?

A. Yes, it runs about that.

Q. And they are growing trees, say, maybe, 150 or 200 years of age? Would you say that?

A. I would judge the oldest ones were, yes, sir.

Q. The oldest ones?

A. Yes, the largest ones.

Q. And ranging from that down. Now, the hemlock is not of very much commercial value in that country, is it?

A. Why, it is not, no. I would not consider it so.

Q. How is this land located as to being near any sawmill?

A. Why, the nearest sawmill to this land, I would judge, is about 12 miles; the nearest to this land.

Q. Over at Detroit?

A. Well, I believe there is a little one at Siletz. That is about four miles from the nearest of this land, a small mill.

Q. A small mill; and there is no railroad or tramway to these lands?

A. I did not see any. There is none.

Q. And the country is rough?

A. Comparatively so, yes.

Q. And you say that you think it would be good grazing land if it was cleared?

A. No, I didn't say—I said it would be grazing land.

Q. You said it wouldn't be?

A. It would be grazing land if it was cleared. It would be worth something for grazing. I would not say it was good.

Q. How long, in your judgment, would it take a man to clear an acre of that ground?

A. That would depend on what he was working with.

Q. No, I said how long would it take him?

A. Well, it would depend on what he had to work with. If he was using powder and a donkey engine—

Q. No, without powder, and a donkey engine, to go out there and clear them out, burn them out?

A. Oh, I suppose he might clear an acre in six months, probably.

Q. He couldn't go in and clear that land for $150 an acre, could he?

A. Well, I wouldn't think so.

Q. No. And after it was cleared, it would not be worth $150 an acre, would it?

A. No, it would not.

Q. What?

A. It would not.

Q. Now, you say you were nine days cruising these six forties, or six claims?

A. Yes, sir, I spent nine days.

Q. Where did you stay while you were there?

A. I stayed, cruising four of the claims, out on the southwest forty in Section 12 in that township.

Q. How far away was that?

A. Well, forty rods, or eighty rods from one claim; half a mile from another, about a mile from another, probably, the fourth one. Well, the fourth one was only half a mile, the fact is, from that place.

Q. And you walked through in nine days these 24 forties?

A. I did.

Q. Twice each way?

A. Yes.

Q. And counted the trees?

A I did just what I testified to, yes.

Q. Counted all the trees. Well, do you know how many trees there are on any one of those forties?

A. I couldn't tell you now, no.

Q. Didn't you make any memorandum of that?

A. Not of the number of trees, no.

Q. When did you make your estimate?

A. When I was going through the ground.

Q. What?

A. When I was going over the ground.

Q. You went over your ground—

A. Yes.

Q. And made your estimate from what number of trees, every five acres?

A. How is that?

Q. I say, when you would make your estimate, at what period of your investigation did you make your estimate?

A. As I was going over the ground.

Q. Well, I know, but after you had gone over one forty, or one five acres?

A. No, when I was going over each one, each five acre tract, I would make my estimate.

Q. Each five acre tract you made your estimate?

A. I did.

Q. But you now say you didn't go over each five acre tract on each forty?

A. No, I didn't say any such thing.

Q. What did you say?

A. I said I went over each five acre tract.

Q. You went over each five acre tract. You went over every forty, then, and looked at every tree on every forty?

A. No, I didn't say that either.

Q. Well, what did you say?

A. I said I estimated the amount of timber on each five acre tract.

Q. Well, how did you arrive at that?

A. By counting the trees; estimated the size of them, and the amount of the timber in each tree.

Q. Well, do you mean to say that you covered every five acre tract in every forty?

A. I do.

Q. Walked over it?

A. Went across it.

Q. Walked over it?

A. Yes, I went across each five acre tract.

Q. Every five acre tract in every forty?

A. Yes.

Q. And counted all the trees?

A. Well, I didn't say I counted all the trees.

Q. Well, did you count them all?

A. I counted—I counted every one that I could see; and I counted most of the trees.

Q. Well, you could see them all, couldn't you, if you walked over it all?

A. I think so.

Q. Well, then, you must have counted all of them.

A. Well, that is a proposition you are putting up; I didn't say it.

Q. I am asking you whether you coupted all the trees?

A. I believe I did. I don't know that I did.

Q. You did; counted all of the trees on six quarter sections, and walked all over it in nine days. You were moving right along, weren't you?

A. Rather slowly.

Q. Did you do that all yourself?

A. Do what?

Q. All of this counting?

A. Yes, sir.

Q. And you gazed at the thickness of the tree; that is, of its diameter, and you gazed at its height.

A. Sure. I didn't measure it—actually measure it.

Q. And then did you figure out on each tree that you gazed on, as to height and thickness, the amount of board measure there was in it?

A. Yes, the average amount, yes.

Q. Then you would then have to figure out the amount of board measure by the rule of every tree on 960 acres? Is that right.

A. No, that is not right.

Q. What is right?

A. Well, do you want me to tell how I did it?

Q. Yes, I do. I want to know how you arrived at it.

A. Well, if there were 60 trees on an acre, or on five acres, and it would make 10,000 feet to the tree, or 5,000 feet to the tree, it was a very simple calculation to make; and that is the way I made my calculation. If there was 20 trees, I made it that way.

Q. Yes, but you said a while ago, you figured out how much there was in each tree?

A. Well, that is just what I am telling you now I did.

Q. By estimating its thickness, that is, its diameter at the butt, and diameter at the top, and then

computing the amount of board measure there was in that tree? Is that the way you did?

A. Yes, that is what I am telling you all the while.

Q. Supposing the sheet of paper now handed you represents one of those forties, will you draw a pencil line through there to show your line of travel through the forty.

A. Well, we will say this is the south.

Q. Marked "S."

A. This north.

Q. Marked "N" for north.

A. Here is east and here is west. (E. and W.) If we would start in on this forty running north and south, start in from the northeast quarter here, run through, the compass man would run through like that.

Q. Make a mark.

A. That is what I have done. Now, I would be working around like this all through it. I would cut over here.

Q. Over on the west side.

A. Back the same way—in that fashion (illustrating). That is the system that I followed almost invariably.

Q. A good deal of the same course that a snake would pursue?

A. Well, I don't know what a snake would do. Probably you know better, because you are nearer related to one.

Q. You never saw a snake travel?

Court: If there is any more of that, we will have to take measures to have it stopped. You have no business to make that kind of remarks to the attorney.

Q. Then you mean to say that you took a line on the west of a forty and made—I will call it spiral—a spiral course, winding around with that line as a center, through the forty north and south, on the west?

A. I would follow back and forth from one side to the other.

Q. And then came back on the east in the same way?

A. Yes; if that happened to be the way I went through it.

Q. And you did that with every forty in these six quarter sections, and did it all in nine days?

A. I did.

REDIRECT EXAMINATION.

Q. How long have you been cruising the way you cruised these six sections?

A. Sir?

Q. How long have you been cruising in the manner that you cruised this?

A. Always: nearly always.

Q. About how many years?

A. I commenced 35 years ago last August.

Q. And you have been cruising continually since?

A. Oh, no; just some each year. The last ten years I have cruised pretty continuously.

Q. Has timber been bought and sold on your cruises?

A. Government timber has, yes. I suppose other timber has. Oh, yes, other timber has.

Q. Does the Government consult you—

Mr. Hall: Objected to.

Court: What is the question?

Mr. Goldstein: The defendant spent considerable time in trying to bring out that the witness did not cruise properly.

Mr. Hall: I didn't even assert that. I was trying to get the facts as to what he did, exactly, and I didn't try to do anything else.

Mr. Goldstein: I think I would be entitled to show how he had been cruising, whom he had been cruising for, and that he had made the same sort of cruise he made here.

Court: What experience he has had?

Mr. Goldstein: Yes.

Court: Very well; you may show that.

Q. Has the Government accepted you cruises in selling the land?

Objected to. Objection overruled. Exception allowed.

A. Yes, sir.

Witness excused.

John P. Savage, a witness called on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Now, Mr. Savage, where do you live?

A. Siletz, Lincoln County, Oregon.

Q. And how long have you lived in Siletz, Lincoln County, Oregon?

A. Since 1896.

Q. Pretty continuously since that time?

A. That is, the most of the time since 1901, I have been permanent there.

Q. Since 1901 you have been permanent there?

A. Yes, sir.

Q. What are you doing, Mr. Savage? What is your business?

A. I am a laborer. I work sometimes in the timber; that is, as guide.

Q. You were in company with Mr. Bailey in making a cruise of certain timber land in the Siletz Reservation?

A. Yes, sir.

Q. What did you do? What part did you do?

A. I acted as a guide, as compass man.

Q. You were compass man?

A. Yes, sir.

Q. Are you familiar with the value of timber on that land in 1902?

A. No, sir.

Q. You don't know anything about the timber there at all, do you?

A. No, sir.

Witness excused.

Mr. Goldstein: In connection with the bench warrant issued by this court upon Soule, who was subpoenaed as a witness, and who did not appear here, I have been informed by the Marshal that he is very sick, and unable to come. He is in bed. And for that reason I took the matter up with counsel with a view of introducing certain testimony we expected to prove by that witness. I think it will be stipulated that C. F. Soule, if called as a witness, would testify that in 1901 and 1902 he was the publisher of the Lincoln County Leader, a newspaper published weekly at Toledo, Lincoln County, Oregon, and that he published in his publication certain notices advising of the intention to make final proof of the nine entrymen mentioned in the plaintiff's complaint. And I offer in evidence the certificates bearing the affidavit of C. F. Soule, the witness, showing that he duly made publication of these notices of intention for and on behalf of these entrymen.

I assume it will also be stipulated that Mr. Soule received his pay for these publications from Mr. Willard N. Jones, the defendant in this case?

Mr. Hall: Yes.

Mr. Goldstein: We offer these in evidence.

Mr. Hall: Objected to as immaterial, however.

Marked "Government's Exhibit 32."

Government's Exhibit No. 32, being the certificates of C. F. Soule, as publisher of the "Lincoln County Leader," of publication of notice of intention to make final proof by William Teghtmeier, Edward C. Brigham, Anthony Gannon, Benjamin S. Hunter, Oliver I. Conner, Richard D. Depue, Thomas Johnson, Joseph Gillis and John L. Wells; all of which said proofs are subscribed and sworn to before a notary public.

Court: On your statement that the witness is ill, the bench warrant will be withdrawn.

Mr. Goldstein: Yes, the bench warrant may be withdrawn.

Adjourned until 10 A. M.

Portland, Oregon, December 7, 1918, 10 A. M.

C. W. Mead, recalled for the Government.

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. You have previously testified as to being directed by the defendant to cruise certain land in the Siletz Reservation early in 1900, I believe, or some time in 1900?

A. Yes, sir.

Q. And you cruised these very nine claims that are the subject of this complaint, did you?

A. I think I did.

Q. Now, Mr. Mead, you were familiar with the value of the timber at that time, were you, in 1900?

A. I was in some parts of the country. In that particular country I was not.

Q. Well, with respect to those nine claims?

A. What is that?

A. What is that?

Q. Were you familiar with the value of timber in that particular part of the country?

A. Not in that particular part of the country. I am familiar with it in other parts of the state; other parts of it.

Q. Well, you saw the particular kind of timber that was on that land?

A. Oh, yes; yes, sir.

Q. How long were you in that part of the country?

A. About six weeks, as I remember now.

Q. What would you say would be the value of the timber?

Mr. Hall: If the court please, we object to this as being incompetent and immaterial. A man cannot tell the value of timber by walking through it. That is a merchant's proposition. He can tell the nature and quality of timber, but he says he don't know the value of it. So therefore he has not qualified him as a witness. Unless he does know the value of the timber, or the value of the land, he is not qualified to testify.

Mr. Goldstein: I will frame my question this way.

Q. Mr. Mead, do you know what yellow fir of

the kind you saw on that land was worth at that time?

Mr. Hall: Worth where?

Q. Per thousand?

A. I do, in some parts of the country. In that particular country, I don't. I don't know what it was selling at.

Q. Or hemlock?

A. I don't consider the hemlock was worth anything at that time, in that locality.

Q. Spruce?

A. Well, the spruce had a value.

Q. What was the value of that at that time?

Mr. Hall: At that time, if he knows, in that locality.

Court: He says he doesn't know.

Q. What did you receive for cruising each claim, do you remember?

A. I was working by the day, so much a day. I think I got $6.50 a day at that time. I think that was it. I am not really positive about that.

Q. $6.50 a day?

A. Yes.

Q. How many days did you work there?

A. Well, all told, I think I worked about six weeks.

Q. Did you ever appraise any timber in that country?

A. No, sir.

CROSS EXAMINATION.

Questions by Mr. Hall:

Q. Did you cruise any other lands in there in that country at about that time?

A. I don't think at that time. I have cruised land since that, not very long ago, below, further down the river than that.

Q. Were those Indian allotments?

A. I think they were formerly Indian allotments, but had since been bought up, as I understand it.

Q. You say that you didn't know the value of the timber at that time?

A. Well, not without comparing it with other values.

Q. No, but I say you don't know what timber was selling for in that locality?

A. No, sir, I do not.

Witness excused.

Malcom Dobie, a witness called on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Mr. Dobie, what is your business?

A. Timber business, cruiser.

Q. Timber business?

A. Cruiser.

Q. How long have you been engaged in that business?

A. About forty-five years.

Q. And where?

A. Wisconsin, Minnesota and the Pacific Coast.

Q. How long have you been engaged in that business on the Pacific Coast?

A. About 30 years.

Q. About 30 years. Did you at any time ever cruise any timber in the Siletz country, there in Lincoln County?

A. I did, on the head of Siletz; 8-8 and 8-9.

Q. Are you familiar with what timber buys and sells for in the Siletz Reservation there?

A. No, sir, I never was down there.

Q. Do you know the value of the timber in 1900, or 1902?

Mr. Hall: Whereabouts?

Q. In the Siletz Reservation?

A. I know what the company paid for timber at that time.

Q. Where?

A. In 8-8 and 8-9, at the head of the Siletz.

Mr. Hall: If the court please, in 1889.

A. No.

Q. Didn't you mean in townships or sections?

A. Yes, townships.

Mr. Hall: Oh, I thought you said 1889.

A. No. 8 and 9.

Q. You mean Townships 8 and 9, the land?

A. Yes, sir.

Q. The land here is in Township 10?

A. I never was in 10.

Q. The lands in 8 and 9 were practically alike, were they, that is the timber?

A. Well, I couldn't tell you because I never was in 10.

Q. Well, what did lands sell for in Townships 8 and 9?

Mr. Hall: At what time?

Q. In 1900 to 1902?

A. About 20 cents a thousand.

Q. You mean it was sold or bought?

A. Bought.

Q. Yes. That was a pretty conservative estimate in the buying?

A. Yes, sir.

Mr. Hall: Objected to as suggestive and argumentative.

Q. What was it sold at?

A. Well, I saw a report in the papers afterwards the same land was sold.

Mr. Hall: Objected to.

Court: I didn't hear that answer.

A. What it was sold for.

Mr. Hall: Objected to as not proper.

Mr. Goldstein: I think he can testify as to general reputation.

Court: He can testify to that.

Mr. Hall: As to what he saw in the newspapers?

Court: If he saw a report of the sale in the newspapers.

Q. What was it selling for in 1902?

A. About 20 cents.

Mr. Hall: If the court please, we want to get it limited to this particular locality on the Siletz Indian Reservation.

Mr. Goldstein: Well, that is what we are talking about. He is talking about Townships 8 and 9, and this is in Township 10. I don't know how much nearer I can get to it. Of course nothing was sold in Township 10.

Court: I think that is getting close enough to it.

Mr. Hall: We save an exception to the admission of this testimony.

Q. As I understand, your company bought the timber there at that time for 20 cents a thousand?

A. Yes, sir.

Q. And what was it selling for by that company?

A. I couldn't tell you.

Q. From what you read?

A. All I know is what we bought. I couldn't tell the selling.

Mr. Hall: Object to hearsay testimony.

Q. Do you know what it was sold for?

A. In 1907?

Court: In 1907?

A. Yes.

Mr. Hall: We object to that, your Honor.

Court: You don't know what it sold for in 1902?

A. No, sir.

Q. Would the company that you represented sell it in 1902 for 20 cents, that you paid for it?

A. No, sir.

Mr. Hall: I object to that, your Honor, unless he knows.

A. Well, I know from the parties themselves, I helped to buy.

Court: Do you know what they held it at in 1902?

A. Well, they didn't want to sell until they had taken in all that group.

Court: Oh, they didn't want to sell it at all at that time?

A. No.

Mr. Hall: I submit, your Honor, that the proper measure is what amount a seller who was willing to sell, but not compelled to sell, to a buyer who was willing to buy but not compelled to buy.

Court: We want to get at the market value, if we can.

Mr. Hall: Yes, by anyone who knows.

Q. How far was this timber that was bought by your company for 20 cents a thousand, from a railroad?

A. Well, that would be the Southern Pacific. I suppose it would be about 25 miles.

Q. About 25 miles?

A. Yes, sir.

Q. How far away was it from a logging stream?

A. I didn't consider any of those streams logging streams.

Q. Do you know whether there are any logging streams running through Township 10?

A. All I know is by the map.

Court: I understand your firm bought this timber in 1900?

A. 1902.

Court: In 1902?

A. Yes, sir. I worked there in the fall of 1901, and then they did the buying in 1902.

Q. Did your company pay any more than 20 cents a thousand in that locality?

A. In some cases.

Q. How much?

A. 25.

Mr. Hall: I object to that, your Honor, unless the time is shown.

Mr. Goldstein: 1902.

Mr. Hall: Well, he didn't say so.

Q. In 1902?

A. Yes, sir, 1902.

Court: What is your answer to the question?

Mr. Goldstein: He answered, I believe, 25 cents.

Mr. Hall: He answered it 25 cents, in some instances.

Q. 25 cents a thousand feet, you mean?

A. Yes, sir.

CROSS EXAMINATION.

Questions by Mr. Hall:

Q. Now, just where was this timber located?

A. I worked in Township 8 south and 9 south, and 8 and 9 west.

Q. And 8 and 9 west?

A. 8 and 9, yes, sir.

Q. Now, you say you bought in townships what —8 and 9?

A. Yes, sir.

Q. What company were you employed by?

A. Chapman Lumber Company.

Q. Chatterton Lumber Company?

A. Yes, sir.

Q. Salem?

A. No, sir, Portland at that time.

Q. Oh, the Chapman Lumber Company, Portland?

A. Yes.

Q. Where was that located with reference to either tidewater or a stream, that you bought?

A. We were quite a ways from tide water. We were up on the head of the stream.

Q. On the head of the stream?

A. Yes, sir, the head of the Siletz.

Q. And that is a logging stream, is it?

A. No, sir.

Q. How would you get the timber out?

A. Railroad.

Q. The railroad?

A. Yes, sir.

Q. How much construction did it require to get a railroad in there? How many miles of construction?

A. There were some branches built afterwards that brought it nigher, but at the time that we bought it was from 20 to 25 miles.

Q. Out five miles?

A. 20 to 25 miles.

Q. 25 miles?

A. Yes.

Q. That was the nearest place to a railroad?

A. Yes, that was available.

Q. Where would that be? At Detroit?

A. Independence, I think.

Q. Oh, Independence?

A. Yes. There was a railroad nigher than that, but it was not feasible to bring the timber.

Q. Did you buy the timber by the thousand or by the claim?

A. Generally by the claim, so much a claim.

Q. And about what were you paying per claim?

A. Oh, it ran from ten dollars up to fifteen.

Q. Ten to fifteen?

A. An acre.

Q. From $10 to $15 an acre?

A. Yes. I don't know as we paid as high as

fifteen, but it ranged in that vicinity. I don't remember just exactly.

Q. Now, in going in there, you were buying in that country the best timber you could find?

A. Yes, sir.

Q. Now, how far would this timber that you bought be from Township 9 south, 10 west?

A. Well, now, I couldn't tell you just exactly, because it was scattered a good deal.

Q. That would take it over the mountains from where you were—over the summit of the mountains?

A. It would be down stream.

Q. You were on the eastern slope of the mountains where you were buying?

A. No, sir.

Q. On the western slope?

A. Yes, sir.

Q. And the stream that you were buying on, then, emptied into the ocean, did it?

A. Yes, sir.

Q. Well, about how far would it be down the Siletz River, if you know, to this land?

A. No, I couldn't tell just exactly.

Q. Then, you don't know where this land is?

A. I know by the map.

Q. You know by the map?

A. Yes.

Q. But you have never been over it?

A. No, sir.

Q. You don't know whether it is as good timber land as the land you were buying or not?

A. No, sir.

Q. Don't know anything about it?

A. No, sir.

REDIRECT EXAMINATION.

Q. You have been in Township 9, have you?

A. Yes, sir.

Mr. Bowerman: What range?

Q. Have you been in township 9, range 10?

A. No, sir.

Q. But you have been in the adjoining township?

A. The township corner.

Mr. Hall: That wouldn't be the adjoining township.

A. 8-9.

Q. Now, Mr. Dobie, what would that land be worth after the timber was taken off it, at that time?

Mr. Hall: Objected to, your Honor, as immaterial.

A. I wouldn't want to put a price on it. In my estimation, it had no value at that time.

Q. You say that the price per acre was $10 or $15 per acre?

A. Yes, sir.

Q. That is what it was buying for?

A. Yes; that is what the company I worked for were paying for it.

Q. And you don't know anything about the value of the land itself, irrespective of the timber?

A. No, sir; no, sir.

RECROSS EXAMINATION.

Q. Didn't you buy more land for nearer the price of ten than you did of fifteen?

A. Yes, sir.

Q. Didn't you buy some of it for less than $10?

A. No, sir, I don't think we did.

Q. You don't remember?

A. No, sir, I don't remember of anything less than ten.

Juror: That would be $1600 a quarter.

Q. Did you know Mr. W. B. Fuller, of Dallas?

A. Yes, sir.

Q. Was he with you at that time?

A. No, sir.

Q. Was he in that country at that time?

A. He was.

Q. And what was he doing there?

A. Well, I couldn't tell you, I am sure. I am quite well acquainted with him.

Excused.

David Edgar, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Mr. Edgar, where do you live?

A. I live about twenty miles from Portland.

Q. And how long have you lived in or about Portland?

A. Since 1901.

Q. And before that, where did you live?

A. I lived in Alaska.

Q. What is your business or occupation?

A. Timber cruiser.

Q. And how long have you been a timber cruiser, Mr. Edgar?

A. About 30 years.

Q. Did you cruise up in Alaska?

A. No.

Q. And where have you been doing your cruising?

A. Well, out of Portland here, different places.

Q. State of Oregon?

A. State of Oregon, California and Washington.

Q. What lands did you cruise here in Oregon, in what counties, do you remember?

A. I have been in nearly all the counties where there is timber.

Q. Did you cruise any land in Lincoln County?

A. Yes.

Q. When did you cruise land in Lincoln County?

A. Well, I cruised there the same time Mr. Dobie did, the fall of 1901 and the year of 1902.

Q. Do you remember what part of Lincoln County you cruised?

A. Yes, sir.

Q. What was that?

A. 8-9; 8-8 and 8-9; Township 8-8 and 8-9.

Q. You mean with reference to townships?

A. Yes.

Q. How far is it from the Siletz River?

A. Why, the head of the Siletz River runs through those townships.

Q. Is that within the Siletz Indian Reservation, do you know?

A. Yes.

Q. Are you acquainted with the kind and quality of timber in those townships at that time?

A. Yes. In those two townships, yes.

Q. Are you acquainted with what the timber was buying for at that time?

A. Yes, sir.

Mr. Hall: If the court please, I want it to be shown that it is in this particular vicinity. He has testified to land that is 12 or 15 miles away, or maybe 24.

Court: Well, this is in Section 9 and 10.

Mr. Goldstein: Townships 9 and 10 are our entries. He has reference to Townships 8 and 9.

Court: It is all in the same general locality?

Mr. Goldstein: Same locality.

Mr. Hall: It doesn't seem to be adjoining townships.

Court: I think that is close enough.

Mr. Hall: Save an exception.

Court: Very well.

Q. What was the timber buying for at that time in that locality?

A. Well, it bought for about—the lowest was $1,000 for any claim that I knew of.

Q. You mean $1,000 for a quarter section?

A. For a quarter section.

Q. Of 160 acres?

A. Yes. And the highest—the highest claim that I knew of, sold in that country was $3,500. That was later on, you know, some time after that.

Mr. Hall: I object to that.

A. Just the one claim.

Court: What year was it?

A. Oh, it was a couple of years after that, I think.

Court: That would be in 1904?

A. Somewheres along in that neighborhood.

Court: Well, cut that out and get back to 1902.

A. 1902.

Q. What did claims buy for in 1902? What was the lowest?

A. I heard of some being sold there for $1,000.

Q. And what did it range up to? Did it go up?

A. It went up from there; well, about $2,500 was the highest then, I think.

Q. What was the average claim there?

A. I don't think it was over $1,500—$1,600.

Q. $1,600 a claim?

A. I don't think it was over that.

Q. Now, do you know what the price of timber, the buying of timber would run?

A. No, I don't.

Q. Stumpage?

A. You mean to sell the timber?

Q. Yes.

A. As a body?

Q. Yes.

A. No, I don't know.

Q. The price per thousand feet, do you know?

A. Oh, I couldn't tell you, you know. There was no—

Q. What was it buying for at that time, do you know?

A. I didn't know of any being sold at that time.

Q. How much timber would be on a claim that would bring $1,500 a claim?

A. Well, that country would average about 50,000 to the acre. It would make an average. They bought them along.

Q. That would be about 8,000,000 feet of timber per claim?

A. Yes.

Q. That is what would bring about $1,500 per claim?

A. About that. There was some sold for more; some less.

Q. How did they run in timber; just about the same as the next township?

A. Which?

Q. How did they run in timber—fir and hemlock and spruce?

A. Oh, it was mostly fir.

Q. Do you know anything of the value of the land as land, irrespective of growing timber on it, for grazing purposes, or anything of that kind?

A. Well, I never thought much about it. It didn't have any value at that time, to speak of. It is rough country.

Q. That is, there was no market for it at that time?

A. No.

Q. I assume the figure you give is what the company was paying for it at that time, the timber?

A. Yes. About that at that time.

Q. They would not sell it at that price, would they?

A. I don't think so.

Q. At that time?

A. No, I don't think they would.

CROSS EXAMINATION.

Questions by Mr. Hall:

Q. Whom were you cruising for in that country?

A. The Chapman Lumber Company.

Q. The Chapman Lumber Company, the same as Mr. Dobie?

A. Yes.

Q. You were cruising in 8-8 and 8-9, weren't you?

A. Yes.

Q. The entire townships?

A. No, not at that time.

Q. What part of 8-9 were you cruising?

A. Well, it was mostly on the east side. The east half of the township was the most of it.

Q. And what part of 8-8 were you cruising?

A. Well, the west, I should say, mostly.

Q. Now, a township is six miles square, isn't it?

A. Yes.

Q. And contains 36 sections of land?

A. Yes.

Q. Now, what part of 8-8 did you cruise?

A. Well, I think the most that I cruised was in the western part of it.

Q. Western part of 8-8?

A. Yes.

Q. So that would throw the cruisings together?

A. Yes, pretty well together.

Q. The eastern part of 8-9 and the western part of 8-8?

A. Yes, it seems to me that way.

Q. Now, the Siletz River runs through the eastern part of 8-9, doesn't it?

A. 8-9, it comes up—let me see. The main river don't touch the southeast corner, I don't think, of the township. It runs through—I don't think it touches the east half. The north fork does, though, I think. The north fork of the river gets into 8 and 9.

Q. Now, for illustration, the paper I show you, this would be 8-8, Township 8 South, 8 West; and you cruised the western half of that?

A. Of 8-8?

Q. Yes?

A. Yes.

Q. And the next one pointed out by you, 8-9, you cruised the eastern part of that.

A. Well, I never was over to the west side of the township. I know that.

Q. You never cruised over here?

A. No, I never was over there.

Q. Then you never went over into 9-10?

A. No, sir.

Q. That would be—then you were not nearer than three miles of 9-10?

A. No, I don't think I ever was.

Q. And you have never been in 9-10?

A. No, sir.

Q. And don't know anything about that timber?

A. Don't know a thing about it.

Q. Now, in what way was this timber to be brought out?

A. Well, that had to be brought out by railroad.

Q. Into the Willamette Valley?

A. Well, yes, I supose that is the way they figured to fetch it out.

Q. And about how much construction would it require?

A. 25 miles, I should judge.

Q. Of railroad?

A. At that time, yes. They would have to come to Independence.

Q. Now, to go from where you cruised in the east half of 8-9 over into 9-10, there had to be a large mountain crossed there, or large ridge?

A. Well, it is rough country.

Q. Rough country?

A. From looking at the map.

Q. Would you say at that time that the land and timber would be as valuable over in 9-10 as it would in 8-8 and 8-9?

A. Well, now, that is pretty hard to say. I never was over there; didn't know anything about the river over there.

Q. Well, considering the fact that it would cost more to get transportation, to build your road, and to get access to it, it would not bring as much money, would it?

A. Down below?

Q. Over in 9-10.

A. Well, we didn't think so at that time.

Q. No. You don't think so now, do you, that it would at that time have brought as much money as that which you had cruised?

A. Well, I don't know. I couldn't say as to that.

Q. It was not as available?

A. It was not then.

Q. And did you know of any sales over in 9-10?

A. No, I never heard much about that. I never paid any attention to it.

Q. Now, how much of 8-8 was on the reservation, the Siletz Indian Reservation?

A. Well, I don't remember that even. Parts of it were.

Q. Was the land that you were cruising surveyed at that time?

A. Yes. 8-9 is in the Reservation, all of 8-9.

Q. You don't know how much of 8-8?

A. I don't know how much of that is in the reservation. I think 8-8 is in the reservation, though. Part of it is.

Q. Where were these claims that you speak of that were sold at $1,000?

A. Well, I couldn't locate them just now, only just by hearing these things.

Q. Do you, of your own knowledge, know of any claim being sold for more than $1,000, of your own personal knowledge?

A. Yes, I know of one claim I bought myself.

Q. Where was that?

A. In 8-8.

Q. In 8-8?

A. Yes.

Q. In the east part of 8-8 or the west part?

A. Well, let me see. It was along in Section 3 or 5—I don't know which.

Q. That would be on the north line?

A. On the north line. It was a fraction.

Q. On the north line of the township?

A. Yes. I bought that for $1800 myself.

Q. And was that purely a timber claim?

A. Timber claim.

Q. But that would be fully 12 miles from the center of 10-10, wouldn't it?

A. Oh, yes, just about.

Q. Is that the only sale that you know of personally?

A. That is the only one that I could say.

Q. Where were these sales that you have heard of, that you testified that were made for $1,000?

A. I don't remember exactly where they were now, only just from hearing the reports. We heard of those reports.

Q. That was purely hearsay?

A. Purely hearsay.

Q. And every sale that you have testiifed to came to you from hearsay, or hearing other people talk?

A. Why, I heard the owner say what he paid for it.

Q. Yes, the owner that he had gotten $1,000 for his claim, or whatever he did get?

A. Well, the man that bought it told me he paid so and so for such claims.

Q. But you don't know where they were?

A. I knew where they were at the time.

Q. Can you tell the jury where they were now?

A. No, I couldn't. They were in them townships.

Q. In the townships that you were cruising?

A. Yes.

Juror: What year was this $1,800?

A. 1902.

Q. The juror wants to know what year it was?

A. 1903, for two or three years along there

Q. The price was lower earlier, wasn't it?

A. Yes.

Q. Along in 1902 they were less than they were later?

A. They were lower, yes, a little.

Q. What time did you buy your claim?

A. Well, I think that claim was in 1902.

Q. You think you bought it?

A. I think it was 1902, or early in 1903 that I bought that claim.

Q. Have you got it yet?

A. No. I didn't buy it for myself. I was purchasing for the company.

Q. Oh, you were buying for other people?

A. Yes.

Q. For the Chapman Company?

A. Yes.

Mr. Hall: I think, your Honor, I will have this map that has been identified by the witness marked.

Court: Very well.

Marked "Defendant's Exhibit C."

Q. Would there be any difference in the values there between 1901 and 1902?

A. Well, I just came there in the latter part of 1901. I wasn't acquainted then much.

Q. You don't know.

A. Not at that time.

Q. Then you don't know what the values would be in 1901?

A. I don't know what the values was at any time, just what they bought them for.

Q. Now, as a matter of fact, Mr. Edgar, and from your own experience in the timber business, isn't it a fact that one timber claim, or 160 acres of land to one man, where it is not near transportation, is not worth anything to him? That is, for utilization?

A. How was that?

Court: I think that is a kind of philosophy that the jury can take note of without much inquiry about it.

Mr. Hall: It might be opinion evidence. But with the permission of the court, I will ask this question: As to whether or not the timber was not more valuable where a man could have a large body of it together?

A. Yes, it certainly is.

Witness excused.

W. H. Stennick, a witness called on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Mr. Stennick, where do you live?

A. Portland.

Q. And how long have you lived in Portland?

A. Most of the time since 1900.

Q. Most of the time since 1900. Before that, where did you live?

A. Wisconsin.

Q. What is your business?

A. Timber estimator.

Q. Timber estimator?

A. Yes.

Q. How long have you been engaged in that business?

A. The majority of the time for 24 years.

Q. Are you in business for yourself, or connected with somebody?

A. Part of the time I was for myself; most of the time.

Q. Just tell the court and jury what a timber estimator does; what his business is?

A. Why, it is to go into the timber, and estimate about how much, what the amount of the timber is on the land, and report it.

Court: Do you mean timber cruiser?

A. Yes, sir.

Q. Oh, you are a timber cruiser? The same as timber cruiser?

A. Considered all one, yes, sir.

Q. Did you cruise any timber in Lincoln County, Oregon?

A. I have, yes, sir.

Q. And when did you cruise there?

A. First in 1902, and I have cruised there different times up until about 1912.

Q. Did you ever cruise any of the timber on the Siletz Reservation?

A. Yes, sir.

Q. Are you acquainted with the quality and kind of timber growing on the claims in the Siletz Reservation?

A. Yes, sir.

Q. What would you say as to what timber was buying and selling for, at or about 1902, in that locality?

Mr. Bowerman: What particular locality?

A. I couldn't answer that question.

Mr. Goldstein: Siletz Reservation.

Court: Did you say you couldn't answer that question?

A. Yes, sir.

Court: Well, he says he couldn't answer that question.

Q. Weren't you cruising timber about that time?

A. Some, yes, sir.

Q. In 1902?

A. Yes, sir; but I was not buying or selling.

Q. Well, do you know what it was being bought and sold for?

A. Just from hearsay.

Q. Well, that is all we ask you. We didn't expect you to be buying. What was it buying and selling for in 1902?

A. Averaging about $1,000 a claim, from what I heard.

Mr. Hall: We object to that.

Court: He answered about $1,000 a claim is what he heard. Do you object to the question?

Mr. Hall: I object to his testifying unless he locates it at or near where these lands were.

Court: He says it is on the Siletz Reservation.

Mr. Hall: The Siletz Reservation is a large body of land, your Honor.

Q. Do you remember what townships you cruised in?

A. In 1902 I was in 8-9.

Mr. Goldstein: That is close enough.

Q. Do you know what it was buying or selling for per thousand feet?

A. No, sir.

Q. You just merely stated it was about an average of $1,000 per claim?

A. Yes, sir.

Q. Is that irrespective of stumpage?

A. I think so.

Q. How much stumpage would be on a $1,000 claim, average?

A. I couldn't answer that question.

Q. Well, what would be the average worth of that?

Mr. Hall: Of what?

Mr. Goldstein: Stumpage, per claim.

Mr. Hall: If he knows. He said he didn't know.

Q. That is what I am asking you.

A. Well, from what I heard, they were valued, selling at about 10 cents per thousand.

Mr. Hall: Wait a minute—what he heard. He testified in the first place he didn't know.

Mr. Goldstein: Except by hearsay.

Court: Well, from what he heard, he said it was buying and selling for about 10 cents per thousand.

Q. 10 cents per thousand on a claim, is that correct?

A. I said $1,000 a claim, or about 10 cents per thousand.

Q. Oh, I see. Would that be the price of what it would be held at by the purchaser, do you know?

A. No, sir.

CROSS EXAMINATION.

Questions by Mr. Bowerman:

Q. What were those claims you cruised in there?

A. The ones I looked at averaged about 10,000,000 per claim.

Q. That would be about $1,000 a claim, 10 cents a thousand?

A. Yes, sir.

Q. That was in 1902?

A. Yes, sir.

Q. Were you in there in 1901?

A. No, sir.

Q. Do you know anything about the value at that time?

A. No, sir.

Q. Do you know whether any of it was sold in 1901?

A. I never heard of any.

Q. Which part of the township were you in, the east part or west part?

A. I think I was about the center of the township at that time.

Q. About the center?

A. I don't remember exactly the section I was on.

Witness excused.

R. H. Howell, a witness called on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Goldstein:

Q. Mr. Howell, where do you live?

A. Toledo, Oregon.

Q. And what is your office? What office do you hold?

A. County Clerk.

Q. Of Lincoln County?

A. Yes, sir.

Q. How long have you held that office?

A. It will be eight years the second of this coming January.

Q. You are the present County Clerk?

A. Yes, sir.

Q. Also Recorder?

A. Yes, sir.

Q. How long have you lived in Toledo?

A. Since April, 1903.

Q. Where did you live before that time?

A. Waldport.

Q. In Lincoln County?

A. Yes.

Q. How long have you lived altogether in Lincoln County?

A. Ever since it was a county. I was in the county when it was created.

Q. That is how many years?

A. It was created in 1893.

Q. Do you know anything about the land in Siletz, in the Siletz Reservation?

A. Well, I have been over it a good many times, yes, sir. I know the geography of the country fairly well.

Q. Have you seen and noticed the quality and kind of timber growing on the Siletz Reservation?

A. Well, I have never been in the hills. I have been up and down the river. I have never been back in the mountains.

Q. Up and down the Siletz River?

A. Yes, sir.

Q. Do you know what the timber land in the Siletz Reservation was being bought and sold for in 1902?

A. Well, it would be only hearsay.

Q. Well, that is all we can ask for.

A. Yes.

Court: How old were you in 1902?

A. I am 45 now.

Q. Just answer that, please.

A. Well, I forget the question just now.

Q. I asked you if you know what the timber land in the Siletz Reservation was being sold for in 1902?

A. Yes.

Q. You said you knew only by hearsay?

A. That is the only way, yes.

Q. Now, what was a claim of 160 acres, a quarter section, of timber land on the Siletz Reservation being bought and sold for in 1902?

Mr. Hall: Objected to. In the first place he is asking for hearsay testimony; and in the second place he is asking covering a territory that was, I think, about 24 miles long, possibly, by about 18 or 20 miles wide. To ask a witness if he was acquainted with the values of land in the Willamette Valley, without giving the location within 12 or 15 miles, wouldn't be of any advice to either the court or the jury. The idea is that a man should be ac-

quainted at least with lands in the immediate vicinity so that he can tell what lands were sold for and what they were held at, and in that way throw some light. But to take a whole tract of land, you might just as well ask him if he knew the value of lands in Lincoln County.

Mr. Goldstein: I said the Siletz Reservation.

Court: I don't think you need argue that very much. It has been a little difficult to get at the price of land, or the selling or buying price of land in that locality, and this seems to me the nearest you can get at it. I am inclined to allow this testimony to go in. You may ask the question.

Q. What was it being bought and sold for in 1902 on the Siletz Reservation per claim, if you know?

A. Anything up to about $1,000—$1,200.

Court: A claim?

A. Yes, sir.

Court: 160 acres?

A. Yes, sir.

Q. You were subpoenaed to bring with you certain records of conveyances?

A. Yes, sir.

Q. And you have them here with you?

A. Yes, sir.

Q. And those books have been in your custody as County Clerk and Recorder of Conveyances?

Court: I don't think you need take up much time with that. He is the County Clerk over there,

and he brought the records. Let that be understood.

Mr. Hall: We offered to take certified copies without bringing this witness.

Mr. Goldstein: I think we are entitled to put in the proof as we see fit. In any event, they raised some question as to the validity of certain documents that were read into the record, and we have the original records here.

Q. Now, I want you to look at Book 5 of Deeds here, page 455, purporting to be a deed from Edward C. Brigham to one Sisler.

A. Yes, sir, that is here.

Mr. Hall: If the court please, we shall object to proving this in this manner, for the reason that the law provides how this proof may be made. It may be either by putting in the original deed or a certified copy, certified by the Clerk.

Court: Counsel seems to want to get in the original for some reason or other. Have you certified copies?

Mr. Goldstein: No, we haven't got certified copies.

Court: Let that be identified, and let the Clerk make certified copies, and put them in evidence.

Mr. Goldstein: Well, then, with the understanding that certified copies will later be introduced in evidence and marked, we will now identify the various conveyances.

Court: Very well, go ahead and do it.

Mr. Goldstein: I guess it will be all right for me to read it, will it?

Court: That is a deed from whom to whom?

Mr. Goldstein: Deed from Edward C. Brigham to H. L. Sisler.

Court: What is the date of it?

A. The 5th of August, 1903.

Court: Well, that is enough. Now, get your certified copy, and the court will admit it in evidence.

Mr. Goldstein: All right; as shown in Book 5, page 455, of records. Couldn't we just as well read the deed into the record, if the court please, and save the trouble of getting certified copies?

Court: Well, we don't want to take up the time of the court to do it this morning.

Mr. Haney: All these deeds, Your Honor, were in that deposition that counsel objected to. If counsel is satisfied that we treat them as certified copies, there are copies in that deposition of all these deeds.

Mr. Hall: I told counsel to begin with that they might get a certiifed copy. I have no way of knowing whether the copy is correct that they give me that is unidentified, but I am perfectly satisfied if this Clerk makes a certified copy and puts it in. We are satisfied with that.

Mr. Goldstein: Well, let us not waste any time. Deed from H. L. Sisler dated December 16, 1904, covering the same land conveyed to Sisler by Brig-

ham, and granted to Edward D. Wetmore as shown in Book 16, page 2, of records.

Court: What is your object in introducing this record at all, the original record?

Mr. Goldstein: Showing the transfers made; showing that the land was conveyed by the patentees.

Court: Well, I understood Mr. Hall to say that he would agree that the Clerk might certify copies of each one of those deeds, and that they should go in evidence. What is the objection to offering the evidence in that way?

Mr. Goldstein: There is no objection, except that at the time I subpoenaed the Clerk, it was overlooked having certified copies made. That was all. That was the only reason why certified copies were not made. No particular objection. But I cannot see any harm in having original records produced and read into the record, the same as at the former trial.

Court: I don't see how that helps you, introducing the original record, when you could just as well have a certified copy.

Mr. Goldstein: There is no particular advantage to be gained, except it was overlooked to have certified copies made.

Court: I suppose he can make those today, can't he?

Mr. Goldstein: I suppose he can, your Honor.

Court: Well, then, let him make it and put it in evidence.

Mr. Goldstein: It is not necessary to identify the particular conveyance?

Court: No, it is not necessary to go any further with that.

Mr. Goldstein: We will have them in by Monday, I guess.

Mr. Hall: Of course, we reserve the right to object to their materiality.

Court: Yes. The court will overrule your objection as to that, so there is nothing in the way of introducing them.

Mr. Hall: I didn't want it to appear in the record that I consented, except as stated.

Mr. Goldstein: The Government is ready to conclude its case, with the exception that we are preparing that proffer, and we are not yet decided as to the form; and inasmuch as the records have to be inserted Monday morning, we would like the right to introduce our proffer with respect to the admissibility of testimony the court ruled upon the other day. With a certified copy of the records, we are ready to close now.

CROSS EXAMINATION.

Questions by Mr. Bowerman:

Q. When did you say you went to what is now Lincoln County?

A. Well, I went to what is now Lincoln County when I was a boy 14 years old.

Q. 14?

A. Yes. I lived in Waldport, that is in the south end of the county, until April, 1903.

Q. Came up to the county seat in 1903?

A. Yes, sir.

Q. And when did you hear that claims sold on the Siletz in 1902 for $1,000, or up to $1,000?

A. I don't say any certain date. I have been associated with the Wade boys more or less, and they have been interested in timber, and Mr. Lee Wade has bought, I think, quite a good deal of timber.

Q. You don't fix any particular time?

A. Along about this time when I came to Toledo.

Q. About that time?

A. Yes.

Court: That was early in 1903?

A. Yes. I came there as a county official, and Mr. Ira Wade was elected Clerk at the same time I was elected Assessor, and Deputy Lee was working there, and I became acquainted with them that way, and I just heard the conversations.

Q. And you think that was about 1903?

A. Yes, along there.

Q. You said they sold up to $1,000 or $1,200?

Mr. Hall: Up to $1,000.

A. Yes, anything up to $1,000 or $1,200.

Q. $1,000 was the outside figure. What would be the least?

A. Well, I think there were claims sold over there as high as five or six hundred dollars.

Q. As low as five or six hundred?

A. Yes. Now, I wouldn't say they were 160 acres, but they were tracts belonging to some one person.

Q. Did you pay any attention to the location or character of any of this land that you heard of the sale of?

A. No, I don't think I ever did.

Q. Do you know whether it was timber land, or farming land, or what it was?

A. Well, mostly timber.

Q. Mostly timber?

A. Yes.

Q. Do you know what its location was as to accessibility to transportation?

A. Well, fairly well, some of it I do, yes. The Siletz River cuts the belt in two, running a little south—well, quite a bit south of the center of it. Most of the Siletz timber lies north of the Siletz River; some of it south.

Q. None of that timber has ever been brought out on the Siletz River, has it?

A. No. There has been a little sawed up and brought out, is all.

Q. Hauled out?

A. Yes, sir.

Q. There is a little mill over there somewheres, isn't there?

A. Yes, there are two mills on the mouth of the Siletz, near the mouth.

Q. Well, that is something recent, isn't it?

A. Yes. Well, there has been one there about —oh, 8 or 10 years; a small mill.

Excused.

Court: Is that all the evidence you have now?

Mr. Goldstein: That is all, your Honor.

Court: I presume you are not ready to go on at the present time?

Mr. Hall: I understand they have rested their case?

Court: Yes.

Mr. Hall: There was Mr. Laughlin I hadn't cross examined yet. I wanted to ask him a few questions.

Court: Very well. Call him.

T. I. Laughlin resumes the stand.

CROSS EXAMINATION CONTINUED.

Questions by Mr .Hall:

Q. Mr. Laughlin, you testified yesterday that you cruised a couple of these claims that were here in controversy?

A. Yes.

Q. How did you cruise those, Mr. Laughlin?

A. You mean what system?

Q. Yes.

A. What we call the strip system.

Q. Beg pardon?

A. What is known as the strip system.

Q. The strip system?

A. Yes.

Q. Just explain that to the jury.

A. Well, it is setting off twenty rods, or a quarter of the distance across the forty, and running a line directly through it. The compass man does that work, and the cruiser's duty is to count the strip of trees, four rods wide on each side of that line, and compute the contents at the end of each tally, or twenty rods, which would make one acre out of each five, or when you get through the forty you have counted up one-fifth of the acreage, and averaged the balance.

Q. Well, do you take each and every strip in every forty that way, or do you go through a portion of it and estimate the rest?

A. Go through the whole forty, starting at one side, no matter which, whichever side you happen to approach it from, and carrying your line across it the entire distance. The compass man will tell you when you get tally one, that is twenty rods, or what we call a five acre piece. There we stop and compute the number of trees we have by volume table, and its contents; set that down, and get the next twenty rods, see. Count your strip on either side.

Q. When you go through these strips, you go in a winding spiral?

A. No, sir; direct line.

Q. A direct line?

A. Yes, sir.

Juror: That is, the compass man goes on a direct line?

A. Yes; and the cruiser follows directly after him in order to be sure he gets only the trees that belong on the strip to be counted.

Q. Yes. And how do you arrive at the quantity of board measure there is in a tree?

A. By taping it, or taping several trees of the same character, or grouping them together, making your volume from that.

Q. How do you arrive at the length of the log that can be cut out of the tree?

A. Well, the best method is to take the measurements from down trees, where they are very plentifully found in this particular country. There is hardly an acre of it that hasn't got some down timber on, where you can get the exact length of the tree; and you get your measurements from that.

Q. Then do you count the trees?

A. Count the trees as I tell you, on this eight rod strip; that is, four rods on each side of your compass.

Q. Well, does that result that you count all the

trees on the 160 by the time you have gotten through with it, have they all been counted?

A. Well, no, you couldn't do that. You can only count about so many of them.

Q. Yes, and estimate the rest?

A. Yes. Then if the timber is uniformly distributed over the balance of the land, you call it so many trees to the acre. If there is a hole in it, what we call a hole, where there is not any timber you have got to make a deduction for that.

Q. Assuming that the paper shown you, that is marked for identification "Defendant's Exhibit C," is a township map, could you point out to the jury about where it was you did your cruising?

A. These squares represent a township?

Q. Yes.

A. The scale is very small there. Yes, sir, it has been indicated here by somebody.

Q. Well, just hold it up and indicate to the jury about where it was you cruised.

A. My cruising was done on Sections 3 and 4, in this portion of the township. That would be on the north side and near the center.

Mr. Haney: I don't believe the jury can see that. Isn't there some chalk there, Mr. Witness, that you can illustrate? It is so small on that scale.

A. It is a small scale.

Mr. Haney: Couldn't you stand right down there and take a piece of chalk and draw a diagram (on the blackboard).

Q. Mark it Township 9-10.

Mr. Haney: Wouldn't a quarter section be sufficient to illustrate?

Mr. Hall: No. I just wanted him to show in the township where he was cruising, in what part of the township. I know where it is now. He says 3 and 4. Wouldn't that be on the north line of sections, and either 3 or 4 miles from the northeast corner, Mr. Laughlin?

A. Well, we will get at it quickly, Mr. Hall. (Draws on board.)

Q. Now, put a 9-10 up there, if that was the township.

A. "9 S., 10 W." Now, the work I did—this is Lot 1, 2, 3 and 4, in Section—

Court: In that general locality. I don't think you need go into details.

Mr. Hall: I just wanted the locality.

Q. I just wanted you to show the sections that were cruised.

A. Sections 3 and 4.

Q. Township 9 South, Range 10 West?

A. Yes, sir.

Q. I just wanted you to locate where it was.

A. Yes. Well, that is the location.

Juror: How far is that from the Siletz River now?

A. It is about three and a half miles. The Siletz River runs through the southern portion of

this township. I can show you better by a township map.

Juror: That is near enough.

A. Here, Mr. Hall—you can show the jury this sketch, if you wish. There is a sketch of the whole township, showing the ridges.

Q. This is yours, though?

A. It is one I got up, yes.

Q. You wouldn't want that to go into evidence?

A. Why, I thought perhaps the jury might look at it.

Q. They cannot look at it unless it goes into evidence. It is just a township map.

A. Yes, sir, the diagram on the blackboard would do just as well.

Witness excused.

Mr. Hall: We wanted to recall Mr. Wells, but I can do that Monday morning, for a little further cross examination in regard to his proof.

Court: Will he be here Monday?

Mr. Haney: We will have him back Monday, your Honor. It seems to me it is so close to closing time, the Government should not be required now to close its case. I think we are about through. We will be able to stipulate about this testimony, and these records will be ready Monday morning.

Court: I will excuse the jury until Monday at 2 o'clock.

Adjourned.

Portland, Ore., Dec. 9, 1918, 2 P. M.

Mr. Haney: If your Honor please, we have a stipulation here signed by counsel for the defendant, and ourselves, stipulating as to the record that we were attempting to prove on Saturday by the County Clerk. It will save a lot of time and the making of a lot of certified copies of deeds. It has been checked over by both sides, and we want to file that.

Now, there is also in the record that was introduced as to the J. L. Wells claim a certified copy of a paper which purports to be a cross examination of Mr. Wells by one C. E. Loomis, who is said to be an agent of the Land Department; and at the request of counsel, I told them that I would stipulate with them that that might go in, and that it is what it purports to be. But I will not stipulate when it went to the Land Office. I don't know. If we later find that it went to the Commissioner's office along with this proof, I am willing to stipulate to it, but I don't know when it went there. But it speaks for itself. I will admit Mr. Wells was examined by this man Loomis, and he made the answers shown in that certified copy. It seems to be a detached sheet of paper, headed "Cross Examination of J. L. Wells by C. E. Loomis."

Mr. Bowerman: Cross examination made at the time the proof was taken?

Mr. Haney: Yes, am willing to stipulate that.

Court: That fixes the date, then?

Mr. Bowerman: Yes.

Mr. Haney: That fixes the date, then, when the cross examination was made, but I don't know how it ever got to the Land Office, or whether it ever got there. Apparently it did some time get there, because it is certified by the Land Office officials.

Court: What is the position held by Loomis?

Mr. Haney: I am unable to say. He was some kind of agent of the General Land Office. I don't know what his authority was, or who he was, or anything about him.

Mr. Hall: I can state, your Honor, that he was a special agent of the Land Office when I was United States Attorney, up to 1904. I did business with him in that capacity; he was so recognized.

Court: He used to live at Eugene?

Mr. Hall: Yes.

Court: That is the man?

Mr. Hall: Yes.

Mr. Haney: Your Honor, as to one other question. We agreed to the court the other day we would make a written offer of proof as to these deceased witnesses. I have copies of their testimony some place in the office—I suspect in Mr. Goldstein's desk, which is locked up, and he is sick—I am not able to get them. We are ready to close our case, except that I want to submit along with this offer the testimony taken at the former trial, of these five deceased men. I have it here in the

form of the original transcript made at that time, but these transcripts contain testimony from some other people, which would not be admissible. I would like to have an understanding that as soon as I can get these copies that are locked up in the desk, I will attach them to this proffer, and then we are ready to close. I don't want to attach these, because these contain more than what ought to go in. Furthermore, they are marked up with various colored pencils. But I have had copies made of them. As soon as I can get these, I want to attach it to this offer and submit it.

Court: Do you know what that will be?

Mr. Hall: I don't know. I don't think that is hardly fair to the court, because the papers in the present form were the ones that were offered. I don't see that it makes any difference. The court ruled on it in a broad sense.

Court: They offered it in more than one form. They offered to read such testimony as they thought pertinent into the record.

Mr. Hall: We have no objection to waiving the time at which the counsel shall present these matters to the court; that is, that he may prepare them later.

Mr. Haney: That is satisfactory. Before the case is closed, I will file it with the Clerk.

Court: You want to make that offer now, and get a ruling of the court?

Mr. Haney: Yes, sir.

Court: All right.

Mr. Williams: If the court please, we have one witness as a matter of illustration.

John Banks, a witness called as a witness on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Williams:

Q. Mr. Banks, where do you live?

A. In Portland.

Q. What official position do you hold, if any?

A. Draughtsman in the U. S. Surveyor General's office?

Q. Here in Portland?

A. Yes, sir.

Q. As such, are you familiar with the public land surveys of the United States?

A. Well, more or less.

Q. With the methods of surveys?

A. No, not exactly, because I am not in the field.

Q. Are you familiar with the plats of survey that are made by the Government of its public lands?

A. Yes, sir.

Q. Do you know the positions of different sections in the various townships?

A. Yes, sir.

Q. Have you a copy of a plat of Townships 8 and 9 South, Range 10 West, in this state?

A. I have, yes, sir.

Q. What sort of a copy have you, Mr. Banks?

A. I have what is called a photostat copy, taken by a camera—kodak.

Q. Who made the photostat copy?

A. It was made at the Forest Division under my supervision, at 11 o'clock this morning in my presence.

Mr. Williams: I will state to counsel we merely want to illustrate to the jury the location of those townships, the nine claims to some adjoining claims, about which this testimony was admitted.

Mr. Bowerman: This map, if the court please, now purports to show nine claims in question, all the other claims that have been testified about, with a lot of others which I never heard of, your Honor.

Mr. Haney: What claims have not been testified about?

Mr. Bowerman: Oh, there is half a dozen—Finch, Blauvelt—a number of them. We object to that on the ground those are entirely outside the widest scope of their testimony.

Mr. Williams: I haven't offered the map heretofore. I merely want to use this witness with the map to point out, first, where these nine claims are. Of course, it might be a little confusing if there are some other claims.

Court: What is the idea of putting those claims in that were not testified to?

Mr. Wiliams: That is a misunderstanding of the draughtsman in making the plat. That is how they got on there.

Court: Can those names be erased?

Mr. Williams: Of course, we would not ask anything to go in concerning which no testimony was offered in this case. I think I may reach the same end by having the witness illustrate the location on the blackboard.

Court: Very well.

Q. Will you please draw a rough outline of Townships 8 South and 9 South, Range 10 West? (Witness draws diagram.) We want the southern part of Township 8, Mr. Banks; say one tier of sections, or two tiers of sections.

A. That is the south half of T. 8 S., R. 10 W. (Marks on board.) 9 S. 10 W. also.

Q. Now, Mr. Banks, will you point out to the jury the line between Township 8 South, Range 10 West, and 9 South, Range 10 West? What does each one of those squares in which the number appears represent—how much land? What do you call it, each one of those little squares?

A. Each one of those squares, sir, is supposed to represent 640 acres, if it is a full section.

Q. One section?

A. Yes, sir.

Q. Now, will you please mark on that the loca-

tion of the east half of the west half of Section 11, Township 9 South, Range 10 West, the claim of Anthony Gannon?

A. Well, sir, Section 11, east half of the west half. That is the east half of the west half of Section 11. (Marks on board.) 9 South, 10 West.

Q. How many acres does that represent?

A. 160 acres. That is what is called regular.

Q. Now, will you please locate on that diagram the south half of the northwest, southwest of the northeast quarter, and northwest of the southwest of Section 13 in the same township?

Mr. Hall: Give the homestead.

Mr. Williams: That is Mr. Benjamin S. Hunter.

A. There you are, sir. (Marks on blackboard.)

Q. How many acres would that embrace in an ordinary complete survey?

A. I couldn't tell, because it is on the outer edge of the township.

Q. Well, assuming a legal subdivision to have 40 acres or thereabouts, what would it be?

A. There would be four forties there—three forties—four forties, 160 acres.

Q. Now, the claim of Mr. Conner?

Mr. Bowerman: Well, you have a notice from the Surveyor General; you know what the acreage is; you can tell from your record there, can't you.

A. Yes, sir.

Mr. Bowerman: I would suggest it should not

be theoretical matter. There is an actual acreage in that claim.

Q. Kindly look at the official diagram and see how many acres in that claim.

Mr. Bowerman: That country over there seems to be nearly all of it fractional.

A. There is only 120 acres in that one, according to this diagram.

Q. The four forties?

A. Yes, sir, according to this diagram.

Q. 120?

A. Yes. I beg your pardon, sir. Four forties—160 acres.

Q. Well, now, Mr. Banks, will you kindly locate in Township 9 South, Range 10 West, in Section 4, Lots 1, 2, 3, and 4, Claim of Joseph Gillis. (Witness does so.) Now, would you kindly locate in Township 9 South, Range 10 West, Section 3, the north half of the southwest?

A. The north half of the southwest?

Mr. Hall: What claim is that, Mr. Williams?

Mr. Williams: Richard D. Depue.

Mr. Hall: I wish you would call the name.

A. That is the north half of the southwest of Section 3.

Q. I also want adjoining that the southeast of the southwest and the southwest of the southeast.

A. The southeast of the southwest and southwest of the southeast right there, sir.

Q. Claim of John L. Wells. Township 9 South, Range 10 West, Section 10.

A. Yes, Section 10, right here.

Q. The south half of the southeast?

A. South half of the southeast.

Q. And Lots 1 and 2? (Witness marks.) You have your official plat showing the location of Lots 1 and 2.

A. Yes, sir; there is one and two. There is the south half of the southeast. That is a vacant strip.

Q. In Section 15, the northeast of the northeast?

A. The northeast of the northeast, yes, sir.

Q. Does that adjoin the lands above?

A. It does, sir.

Mr. Williams: Now, the claim of Thomas Johnson, Mr. Hall.

Q. Township 9 South, Range 10 West, Mr. Banks, Section 14.

A. Right there, sir.

Q. The west half of the southwest, and the southeast of the southwest.

A. West half of the southwest and southeast of the southwest, right there.

Q. Section 23, northeast of the northwest.

A. The northeast of the northwest of 23, that is right there.

Q. Claim of William Teghtmeier. Township 9 South, Range 10 West, Section 10, south half of the northeast.

A. South half of the northeast right here.

Q. North half of the southeast.

A. North half of the southeast right here.

Q. E. C. Brigham. Township 9 South, Range 10 West, Section 14.

A. 14 right here.

Q. Southeast of the southeast?

A. Southeast quarter of the southeast quarter.

Q. Yes.

A. Check.

Q. Section 13.

A. Check.

Q. South half of the southwest?

A. South half of the southwest.

Q. And the northeast quarter of the southwest?

A. Northeast of the southwest right there.

Mr. Williams: Now, the claim of Daniel Clark, gentlemen, one of the similar acts testified to.

Mr. Hall: We object to the introduction of any testimony, Your Honor, other than of the nine claims.

Court: What else are you putting in now?

Mr. Hall: Endeavoring to delineate these others that were introduced for the purpose of showing intent. I do not see any materiality in that.

Court: Very well, proceed. I do not see any objection to putting those on. The witness is testifying to the locality.

Mr. Hall: Exception.

Mr. Haney: Have you Oliver Conner?

Mr. Williams: I don't know whether I have that or not.

Q. Look at Section 4, Township 9 South, Range 10 West, southeast of the northeast. Have you marked the southeast of the northeast?

A. No, sir.

Q. Well, mark that, the southeast of the northeast.

A. Southeast of the northeast—check.

Q. Northeast of the southeast.

A. Northeast of the southeast—check.

Q. Section 3.

A. Check.

Q. Lot 4.

A. Lot 4—check.

Q. And the southwest of the northwest.

A. The southwest of the northwest is checked.

Mr. Williams: That is all of the nine claims. Those are the claims involved in the suit.

Q. Now, turn to 8 South, 10 West.

A. Yes.

Mr. Bowerman: If the court please, isn't this calling for a conclusion, rather than to illustrate this? There is no means of identifying those claims on there.

Court: They are put on there in the presence of the jury, showing the locality.

Mr. Hall: If you had a different colored chalk.

Mr. Williams: Have you a different colored

chalk—blue or red? I would suggest he make small dots on the map for these other claims.

Court: Have you all the nine claims on there?

Mr. Williams: Yes, they are all on there.

Q. Now, Mr. Banks, if you can mark by some distinguishing mark so as to separate it from these, Section 34—8 South, 10 West, the southwest quarter, north half of it; north half of the southwest?

A. North half of the southwest quarter.

Q. Southeast of the southwest, 33.

A. Southeast quarter of the southeast quarter.

Q. Mr. Banks, start over again. North half of the southwest.

A. North half of the southwest of 34.

Q. Southeast of the southwest of 34.

A. Southeast of the southwest of 34.

Q. And in 33.

A. Check.

Q. The northeast of the southeast?

A. The northeast of the southeast.

Q. That is Daniel Clark. George Rilea. I am going to give the description of the claim of George Rilea.

Mr. Hall: I don't care to check up the descriptions of those. I don't think it is material.

Q. Township 9 South, 10 West, Section 10, the south half of the northwest, and north half of the southwest. Claim of Franklin Hummel.

Mr. Bowerman: That is not right, is it? It runs clear across there.

Q. Now, in Section 11.

A. Same township?

Q. Yes. West half of the west half of the section. Make little dots up and down, please.

A. There is the west half of the west half of the section.

Q. Now, in 9 and 10 again. Section 23, Claim of George West.

A. Section 23.

Q. All right. Northwest of the northwest.

A. Northwest of the northwest.

Q. Section 22.

A. Section 22.

Q. North half of the northwest.

A. There is the north half.

Q. Let us begin again with that Section 23. The northwest of the northwest.

A. Right there.

Q. Section 22; you want the north half of the northwest of the northwest, a 20-acre tract, and the north half of the northeast of the northwest, another 20 acres; and the north half of the northeast quarter. (Witness marks.) Do they adjoin?

A. They adjoin.

Q. Louis Paquet. Township 9, Range 10, Section 23, southwest of the northwest. (Witness marks.) Now, in Section 22, south half of the northeast and the northwest of the southeast (Witness marks). Now, in Township 9, Range 10.

A. 9 South, 10 West.

Q. Section 32, the northwest quarter.

A. Northwest quarter.

Q. Claim of G. C. Lawrence. 8 South, Range 10 West, Section 33.

A. Right here, sir.

Q. South half of the southeast.

A. South half of the southeast.

Q. Northwest of the southeast?

A. Northwest of the southeast.

Q. Southeast of the southwest.

A. Southeast of the southwest.

Q. Now, Mr. Potter's claim.

Mr. Bowerman: Is that correctly on there?

Mr. Williams: I cannot see from here.

Q. Section 33, southeast of the southwest.

A. Southeast of the southwest.

Q. Northwest of the southeast.

A. Northwest of the southeast.

Q. South half of the southeast?

A. South half of the southeast.

Q. That is right. Now, claim of T. S. Potter. 8 South, 10 West, Section 32, the north half of the north half. Four forties right across the top.

A. Four forties.

Q. Now, the claim of Blauvelt. 8 South, 10 West, Section 29, the southeast of the southwest. (Witness marks.)

Mr. Bowerman: There is no testimony of Blauvelt, is there?

Witness excused.

Mr. Haney: That is our case, Your Honor.

Court: I would suggest, Mr. Haney, you might offer the testimony, make your offer now, and then complete the record afterwards.

Mr. Haney: As to those witnesses?

Court: Yes.

Mr. Haney: I thought that was done the other day, Your Honor.

Court: I thought you were doing it over again now in a concrete shape, so there would be no question about it.

Mr. Haney: I am, but I made the offer the other day. All I want to do now is in writing to tender to the court what the witnesses testified to in the former case. I offered to prove by Miss Fleming, and did prove, that she was the reporter, that she took the testimony, and I offered to read to the jury, or state to the jury what the five deceased witnesses testified in the former trial. Then I had some question as to whether that was sufficient, as far as the record is concerned. So I have offered now in writing to do the same thing, so there will be no question, if the matter should be before another court, of what I have offered to prove. In other words, I have transcribed the testimony of those witnesses given in the former trial.

Court: Do you want to offer them now?

Mr. Haney: Yes.

Court: There is an objection to that, and the objection will be sustained.

Mr. Haney: I may, before the trial is over, attach copies of this testimony to this written proffer and file it.

Court: Yes.

Exception allowed.

Government rests.

Mr. Hall: Defendant at this time moves the court for judgment of non-suit in behalf of the defendant, for the reason that plaintiff has failed to prove such a case as is entitled to take the case to the jury.

Court: Do you want to argue it?

Mr. Hall: No.

Court: The motion will be overruled.

Mr. Hall: Save an exception.

DEFENDANT'S EVIDENCE

Edwin L. Chalcraft, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. Hall:

Q. Where do you reside, Mr. Chalcraft?

A. Siletz, Oregon.

Q. What official position do you hold there, if any?

A. Superintendent of the Siletz Indian Agency.

Q. How long have you occupied that position?

A. Since July 1, 1914.

Q. I will ask you whether or not as such superintendent you have in your custody the records and files of the matters pertaining to the Indian Agency?

A. I have; those that belong to the agency, that is.

Q. I will ask you whether or not you were familiar with the manner in which the Government of the United States offered Indian lands, and particularly the Siletz Indian lands for sale, or those portions of them that they were petitioned to sell by heirs or others of the allottees?

A. I am familiar with the regulations; but I was not—

Q. And when a petition was filed, if one was filed, what was the method adopted by the United States in making that sale? Just state to the jury.

A. When an Indian filed a petition to sell his land?

Q. Yes.

A. The petition would be transmitted to the Commissioner of Indian Affairs at the Superintendent's recommendation, and if approved by the Commissioner of Indian Affairs, the land would be advertised for sale; a certain day would be specified when sealed bids made by prospective purchasers would be opened, and these would be opened in public.

Q. Was there any appraisement made of the lands prior to that time?

A. Yes.

Q. Who would make those appraisements?

A. Either the Superintendent or some employe of the Government designated by him.

Q. And along in 1902 and 1903 and '04 were those appraisements given out or were they kept secret?

A. At that time the appraisements were not made public until the bids were opened.

Q. So the bidder, in submitting his sealed bids, would not know what appraisement on the lands had been made?

A. No. I would say that that was the regulation at that time, but that was afterwards changed. They are now made public.

Q. Now, I will ask you if you have any records of sales made of Indian lands in the Siletz Indian

Reservation at or near 1902, or as near there as you have them, made under this method, and near to Township 9 South, Range 10 West?

A. The first that I find was a deed dated—may I refer to my papers?

Q. You may refer to your records.

A. The first that I find is a deed dated February 9, 1904.

Q. Now, what was the description?

Mr. Williams: If your Honor please, if counsel is trying to prove values of the lands, we must insist, as they insisted, and in which they were upheld by the court, that they have their witness testify as of the date to which we were limited, and that the lands should be in this locality. 1902 this proof was made. I assume this witness is going to prove values. I think the values should be proved as of the time to which we were limited.

Court: The values were proved in 1902 as near as you could get.

Mr. Williams: This witness is testifying about something in 1904.

Court: The last question asked was as to the value in 1902.

Mr. Haney. The witness started to answer by saying the first sale was in February, 1904.

Court: I think you better take it back nearer to 1902.

Mr. Hall: The difficulty, your Honor, is that there were no sales until about 1904 of timber land,

and I was going to supplement that by showing that lands had not depreciated in value since that time. It seemed to me that this was a fair way of arriving at a value.

Court: I think one witness testified for the Government of a sale of lands in 1903, but none later than that that I remember.

Mr. Hall: No, I don't think there was anything later than 1903.

Court: I think you better get 1903, or back of that, down to 1901, '02 and '03.

Mr. Hall: Well, I will frankly say to the court that we have no sales of timber land in that vicinity made except about 1904. I was going to show 1904 and '05, being near enough to give the jury an idea as to what bidders offered—people who came in in this form and put their bids in. It seemed to me that was a fair way of showing what the value was then, where they didn't know the appraisement, and they merely submitted their bids.

Court: How much land was sold—a quarter section?

Mr. Hall: In various quantities—mostly 80's I think. I think there probably is one 160. There are only 5 or 6 pieces—4 or 5 pieces—in 1904 and 1905.

Court: I think that is getting pretty far away from the time.

Mr. Hall: The court sustains the objection?

Court: Yes.

Mr. Hall: We except to the ruling.

Q. You have no sales of timber lands in 1902 or 1903?

A. Not that I could find, where I find a record of them.

Mr. Hall: Now, with the permission of the court, I would like to ask the witness as to where the lands are situated, in what townships and ranges, in order to show the near proximity to the land.

Court: Very well.

Q. These lands which you have examined, and which you were about to testify to, I will ask you in what township and range they were situated?

A. In 9 south, 10 west.

Q. And the sections. Don't give the value; just give the sections?

A. This piece that I was mentioning, the deed is dated February 9, 1914, and it is in the southeast quarter of the southeast quarter of section 12, 9 south, 11 west.

Q. The deed was not 1914? 1904, wasn't it?

A. 1904, I should say; and lot 27, section 28.

Q. Now, about how long would the sale, actual sale, precede, or the submitting of the bids precede the deed usually?

A. Why, it usually took from 2 to 4 months to get the papers through the departments and back there.

Q. And what did you say was the date of that —February, 1904?

A. This deed was dated February 9, 1904.

Q. So the sale, then, the actual bidding, would have been some time in 1903?

A. Probably. I have no record of that.

Q. Just explain to the court and jury why it was that it took that length of time after the bids were submitted?

A. Well, after the bids were submitted it took considerable time in the Superintendent's office to prepare the papers and reports that went with it. It was then transmitted to the Commissioner of Indian Affairs, and was usually some time getting through that office.

Court: You say the bid in that case was in 1903?

A. Probably.

Court: You have no idea as to the time in 1903?

Mr. Hall: He was just explaining as to how long it would take. The deed was made in February, 1904.

A. From the Commissioner's office, it goes to the Secretary's office for consideration, and then back to the Commissioner's office, and then back to the Superintendent's.

Court: You think that would make it in 1903?

Q. Would you say, from your experience in handling matters of that kind, that that sale, or the bids, would probably have been submitted in 1903, being only two months? What is your judgment on that, Mr. Chalcraft?

Mr. Haney: It seems to me his judgment is not what is called for. If he knows, he should say.

Mr. Hall: From his experience, I mean.

Mr. Haney: If he doesn't know, he should say so.

Court: Was the deed executed in February, 1904?

A. The deed was executed on February 9, 1904. That is the date it was dated in Washington.

Court: Executed at Washington?

A. In Washington.

Q. That was the patent?

A. Probably. I don't know the kind of deed it was.

Court: It is very probably you got your bid in 1903 then. I will hear that testimony.

Q. You may give the description of the land and state the price.

A. A full description?

Q. Yes.

A. The southeast quarter of the southeast quarter of Section 12, Township 9 south, Range 11 west; Lot 27 in Section 28, and Lot 32 in Section 28—9 south, 10 west.

Juror: Did you say the first one was 10 West or 11 West?

A. 11 West.

Q. One is in 32, 10 West.

A. Shall I read it again?

Juror: Yes, read it again.

A. The southeast quarter of the southeast quarter of Section 12, Township 9 south, Range 11 west;

Lot 27 and Lot 32 in Section 28, 9 South, 10 West, 80 acres.

Q. What were the bids upon that land?

A. The number of bids are not given in the records which I have.

Q. Well, the bid that was accepted, though?

A. $400.

Q. That was for a tract comprising about 80 acres?

A. 80 acres.

Q. Now, is there an appraisement with that?

A. There was an appraisement made, but at that time the records of all the appraisements were not kept apparently, as they were only found in a portion of them.

Q. But what was the rule as to whether or not the land must bring as much or more than the appraisement?

A. It must bring the appraised value or more.

Q. Now, what is the next nearest date that you have, earliest date?

A. Deed dated February 17, 1904.

Mr. Hall: February 17, 1904. I suppose, your Honor, the same rule would apply.

Court: Yes.

Q. Now, where was that land situated? What township?

A. 9 south, 10 west.

Q. What section?

A. Section 8, lots 11 and 12. That would be

lots 11 and 12, southwest quarter, it says, of section 8.

Juror: Was that a full 40?

A. No. It is lots 11 and 12. It is in the southwest quarter of section 8, though.

Q. How many acres in that?

A. There are lots 5 and 6 in the northwest quarter of 17, and the north half of lot 12, north half of lots 11 and 12 in the same section: 87.85 acres.

Q. And what was the bid on that, accepted bid?

A. It was sold for $438.

Q. $438 for 87½ acres?

A. Yes.

Q. Was there an appraisement? Have you the appraisement there on that?

A. No record of an appraisement.

Q. And what is the next nearest one you have?

A. Deed dated May 6, 1904.

Court: That would probably not go back into 1903 for the sale.

Mr. Hall: May is the fifth month. That would be five months.

Court: How many months did you say it took for the proceeding?

A. Oh, from 2 to 4.

Court: Well, I will sustain the objection to that.

A. Occasionally longer because of some special feature.

CROSS EXAMINATION.

Questions by Mr. Haney:

Q. Do the reports that you have on these two sales show whether or not the land was timber land, Mr. Chalcraft?

A. They do not.

Q. And you were not there at that time, were you?

A. No, sir.

Q. Do you personally know what kind of land the two tracts you have described are—whether they are timber land or not?

A. No, sir.

Excused.

N. Campbell, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Hall:

Q. Mr. Campbell, you reside in this city?

A. Yes, sir.

Q. And what official position do you hold?

A. Register of the United States Land Office.

Q. And how long have you occupied that position?

A. Since March, 1905; or I should say it would be for the last over three years. It will be four years next March.

Q. 1915?

A. Yes, 1915. That is right.

Q. Do you have in your custody the records of sales of lands in Indian reservations?

A. Well, I have those pertaining to the sale of certain Indian lands in the Grande Ronde Reservation, under the act of April 28, 1904.

Q. The Grande Ronde Indian Reservation joins the Siletz Indian Reservation on the north, does it not?

A. I believe it does; north, northeast—right in that vicinity. The Grande Ronde is Townships 5 and 6 South, or 6 and 7 South, and 7 and 8 West; right in that vicinity. That is my recollection.

Q. Do you know what Indian lands in the Grande Ronde Indian Reservation were being sold at in 1902 and '03?

Mr. Haney: I object to that unless he shows what part of the reservation; gives some idea of where it was with reference to this land.

Mr. Hall: I will locate that.

Mr. Haney: Might locate it now, before we get into that question.

Mr. Hall: I will ask if he knows first; or from reference to any records which you may have in your possession?

A. I have the records here, but I don't think—from that act, I believe they were sold about 1904. That is my recollection. The records here will show for themselves.

Q. And in what part of 1904, if you can recall from memory?

A. The act, or the sale of those lands?

Q. Yes.

A. I believe it was about—I think it is somewhere about September. I have the records here.

Q. You may refer to the record to determine what the nearest date was to 1903.

A. According to my recollection of this particular sale, it was all in 1904. This record shows the names and addresses of the bidders, description of the land, section, township and range, number of acres, and the rate per acre, the amount that was paid, the first payment on the bid.

Court: What is the date?

A. It doesn't appear to show the date of the bid. It shows here the dates when it was recommended, and then it shows the date of the approval of the sale.

Q. Well, how near to 1903 is the earliest one that you have of that when the sale was recommended?

A. As near as I can perceive now, from casual inspection, August 13th was when these bids were recommended.

Court: In 1904?

A. 1904; about August 13, 1904, when these bids were recommended for approval.

Q. Well, could you say as to about how long

prior to that, ordinarily, the bid would have been received, from your knowledge of the methods?

A. Well, I don't know how the business of the office was then. The policy is to report those sales up just as soon as the business of the office will permit. So my judgment would be that the policy of the Government had been followed, and that it had probably been a very short time.

Q. The whole transaction, you think, would be in 1904?

A. I would think so. The act itself providing for the sale, as I remember—if my memory is correct—was about April 28, 1904.

Q. And you have no record of any in 1903 or 1902?

A. On the Grande Ronde?

Q. Yes.

Court: If the act providing for the sale was in 1904, there couldn't have been any before that.

A. If your Honor please, my understanding—I want to be right—my understanding of the sale of these lands here that I have before me was an act which provided for the sale of certain portions of the lands in the Grande Ronde Reservation, that is, unallotted lands, to aid in the administration of the Indian affairs. I think it was according to the agreement that the Indian Agent had, if my recollection is right, with the Willamette and other Indians on the Grande Ronde Reservation. There was about twenty-five or twenty-six thousand acres of

those lands sold at that time—provided for sale by that act.

Q. What was that?

A. I think there were about twenty-five or twenty-six thousand acres of those lands provided by that act could be sold.

Q. Was that the first sale after 1901 of lands in that reservation, that you have any record of?

A. In the Grande Ronde?

Q. Yes, that was sold under bids?

A. Not under that act. It may be the Indian Department will have some record of sales down there under a different act. But I don't know how this office had any business with this record anyhow. I have got it there. It is our cash record—records of the cash entries pertaining to following up—this book shows just the dates it was paid, the different payments, to make these records complete.

Excused.

B. Gildner, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Hall:

Q. Where do you live, Mr. Gildner?

A. Portland.

Q. How long have you resided in the State of Oregon?

A. 35 years.

Q. And what business do you follow?

A. Timber business.

Q. How long have you followed that business?

A. Well, to some extent, for the last 20 years.

Q. The last 20 years?

A. Yes.

Q. And do you know where the Siletz Indian Reservation is?

A. Yes.

Q. Are you familiar with the lands in this reservation?

A. Yes, I am.

Q. How familiar are you, Mr. Gildner? How much have you been over it?

A. Well, I have been over a great deal of it a great many times.

Q. Are you familiar with the timber?

A. Oh, yes.

Q. Where the timber occurs there?

A. Yes, sir.

Q. I will ask you to state to the jury what the character of the lands is in Section 12, 9 South, 11 West, if that is timbered land, the eastern portion?

A. Yes, that is. If I would look at the map, I could tell you about the river. Yes, I am familiar with Section 12.

Q. Is that timbered land?

A. It is.

Q. Now, Section 28, the western part of th

southwestern part of Section 28, 9 South, 10 West. You may refer to the map.

A. Yes, I know that.

Q. Is that timbered land?

A. That is timbered. What part of Section 12 had you reference to?

Q. Southeast quarter of the southeast quarter of Section 12.

A. That is timbered.

Q. Setcion 8. The southwest quarter of Section 8, of 9-10?

A. Section 8?

Q. Yes.

Mr. Bowerman: Lots 11 and 12, Mr. Hall?

Q. Yes, Lots 11 and 12 in Section 8.

A. I am familiar with that.

Q. Is that timbered land?

A. It is.

Mr. Haney: I don't know whether the jury is hearing this, but I cannot hear anything the witness says.

A. Yes, that is timbered land.

Q. How about 15? What is the description of 15?

A. I have it here. That is timbered land in Section 15, that is all timber.

Q. I wish you would examine the map now shown you, and state what it is, if you know.

A. Those that you asked me about?

Q. No, the map; the map itself.

A. Well, that is a township map of Lincoln County.

Mr. Hall: As a matter of reference and convenience, I offer in evidence a township sectional map of Lincoln County, Oregon.

Marked "Defendant's Exhibit D."

Q. Now, Mr. Gildner, I wish you would point out to the jury what portions of the Siletz Indian Reservation you have been over, as near as you can. Here is a stick.

A. I have estimated this timber in this portion of the township.

Q. What township would that be in?

A. 9-11. Here it is, 9-11, up here. And I have estimated some timber in here, also up in there, and right in there; estimated timber in 10-11. That is in this township here. In Section 10, Section 11, Section 14; and I have estimated timber in this township here.

Court: What township is that?

A. That is in 9-10, Section 4, and Sections 8 and 10 and 15, and some in 23. And I have estimated some of the timber in 10 South, 10 West, right in here. I have estimated timber in Township 9 South, 9 West, up on the Sunshine. Down in Sections 9 and 10 and 4 and 5, also in there; in 8-9.

Q. Have you been over in the eastern portion of 8 South, 9 West, Township 8 South, 9 West?

A. In what portion of the township?

Q. The western portion. The east part of 8 South, 9 West?

A. Yes, I have been through a great part of 9 and 8.

Q. What is the character of that land as compared with 9-10, for accessibility?

A. Well, it is a little closer to market. That would be the only thing.

Q. A little more valuable?

A. And a little heavier stand of timber, probably.

Q. And would the same be true of the west half of 8-8?

A. Yes. That would be still better location, and towards the railroad.

Q. Now, what is the character of the country, Mr. Gildner, in around 9-10?

A. Well, there are two farms on the river, what is called the Lower Farm and the Upper Farm.

Q. I mean, as to whether the country is rough, or what?

A. No, it is not overly rough. That is, on the river, it is generally bottom land, good soil on the river; and from the river you generally slope up.

Q. Will you mark out there to the jury as to where the river runs, follow it?

A. This is the river here. Now, the farms—the road runs to here. Now, this is what is called the Lower Farm right in here. And back here, there are farms on both sides of the river. That is, very

close to the river, it is cleared land, and as you get away from the river, sometimes only 100 yards or so, why, you will come into the timber. The timber generally runs pretty close down. Where it has been cleared, it is very good soil.

Q. Are there any farms not on the river, up in the timber?

A. No, no; no residence of any kind outside of the Indians on the Lower Farm, on the farm land.

Q. Have you seen evidences of settlement as you travelled through that country, estimating timber, of cabins?

A. Oh, I have seen cabins, yes.

Q. Was anybody living in them?

A. No, not very often.

Q. How long since you have cruised around through that country, Mr. Gildner?

A. Well, I have since 1900—1902—1901, I have been in there more or less.

Q. Haven't you been there within the last few years?

A. Oh, yes.

Q. 1910 and 1912?

A. Oh, yes, I have been there very recently.

Q. Well, I wish you would tell the jury of the character of the settlement in that Siletz timber country, outside of along the streams.

A. Well, the settlement was according to the law; that is, they built a cabin and they made a preliminary settlement, and then we had so much

time to build a house, and then we would go back and make a visit to it, and then in so many months, we would go back again. That was the law at that time. That was the way it was construed.

Q. That is what you thought the law was?

A. Well, that is the way the law was. That is the way it was construed to us, I mean.

Q. But they didn't live on it continuously, did they?

A. No, there was nobody lived on it; that is, after they made proof. After they got their final receipt, there was nobody lived there then.

Q. Those cabins, are they deserted?

A. Well, they are now, yes.

Q. Were they, so far as you know, after final proof?

A. Oh, yes. When they made their final proof, why, they didn't go—they might have some of them visited it, but then I don't know of any.

Q. I will ask you whether or not that is true as to all of the reservation that you have been over, and which you have pointed out, except along the streams?

A. That has been the rule of all of them. I don't know of an exception. I don't know of an exception that ever lived in there after they made proof on their homestead.

Q. Do I understand you to testify that even prior to the time of making proof, during the three years that they did that by visits, occasional visits?

A. Well, most of them only lived there, took it up under a fourteen months, and then they paid $1.50 an acre for it.

Q. Commute?

A. They didn't live there, with very few exceptions, that any of them made proof, of a three year proof. They went there and made a visit, and then at that time they had to go there and made their proof; and then after fourteen months they got a final receipt for it, paid $1.50.

Q. Did they stay continuously for the 14 months?

A. No, it was not required.

Q. That is, they didn't think it was required?

A. No. Well, they got their receipts for it.

Q. I will ask you whether or not, if you know, they followed the practice under the homestead act of allowing six months in which to make a settlement, and then an actual eight months' residence?

A. Well, that was—yes, we had to make a start. We put up a sign; that is, they put up a sign on the homestead, and they usually laid a foundation; put some logs across and put up a sign, and then they would go out. And then inside of six months they would go back, and build up their cabin.

Q. What kind of cabins did they build?

A. Well, logs thrown across. Some of them had on part of a roof, and most of them would put on a little roof, and then the balance of the roof, leave it open so the smoke would go out.

Q. What would they have there in the way of furniture, usually?

A. Well, there wasn't no roads in there. They were sleeping on the floor on boughs—split some shakes for it.

Q. Now, were you familiar with the value of timber lands in 1902, in Township 9-10? Do you know about what lands were held at, or were selling at?

A. Well, there wasn't so much selling in them days. There wasn't much buying in 1900 and 1901. I have known claims in that vicinity over there that were bringing around the neighborhood of $5.00 an acre.

Q. $5.00?

A. $5.00. Those were pretty good claims.

Q. And now, take the claims marked in blue and green on the map, which represent the nine claims here in controversy, and explain to the jury how a man would, in that time, have to get timber out of there, in 1902 and '03?

A. Well, getting it out would be a physical impossibility. That is, he might get a little of it down the river, but there was no way of getting it out. There is not up to the present time.

Q. Well, I will ask you whether or not there is any other way that you know of of getting it out, except the building of a railroad in, of a logging road?

A. Well, that is the only feasible way to get it out, building a railroad.

Q. And that would have to be built from where —the Willamette Valley?

A. Well, there is a road that goes in this township here. There is no road that goes over there. There is one road that runs up from Toledo, and goes up here in Section 17, and partly, I think, now into Section 8.

Q. That is in 11 South?

A. That is in 10 South, 10 West. That goes to about here. That is a logging road that runs up from Toledo.

Q. Well, that road was not there in 1901 and '02?

A. No, that was built after that. A little ways was built up—of course, there has been a great deal added to that road. But in the first place, it ran out of Toledo just a short distance.

Q. I will ask you what, if any, value those lands had for farming purposes, the lands that are colored there blue and green, or have?

A. Well, there is some very good land close to the river. Practically all that land that is close to the river is good soid.

Q. Well, I mean, of the particular claims; that which isn't on the river?

A. Well, that of course is up quite high. It is up on Cedar Creek here, and that is quite high up from the river; and this here is quite a ways from

the river. The county road runs right through this piece of land here; and that land that is close to the river is good soil. The balance of it runs up from the river on quite an altitude.

Q. And what is the fact as to being expensive to clear, or not?

A. Well, that timber that is on, of course that is out of the question.

Q. What would you estimate, if you know, it would cost an acre to clear it?

A. Oh, it would be excessive, that that is away from the river.

Q. Would the land be worth as much as it would cost to clear it, for farming purposes?

A. I don't think so.

Q. Now, there is one other question I want to make a little clearer, Mr. Gildner, and that is as to about how much of the time these commuting homesteaders stayed on their claims, if you know, generally?

A. Well, you mean at that time?

Q. Yes.

A. Well, in 1900 and 1902, when they made the proofs in the Siletz, they didn't spend very much time on the lands.

Q. Well, after the Commissioner of the General Land Office decided that there had to be three years' actual residence, or 14 months' actual residence, how much of the time did they stay after that?

A. Well, there were settlers in 7-9 that actually stayed there their full time.

Q. How about 9-10?

A. Well, that was before that time. There were a few test cases that come up, and then the law was laid out very much stricter, and the lands, of course, became a little more valuable, and people stuck pretty close to their job.

Q. Let me ask you this question: Prior to the ruling of the General Land Office that I have referred to, I will ask you whether or not it was the general belief of settlers in that country that if they complied with the homestead law, in practically the same manner, complied with the law of 1894, being this one here in question, in about the same manner that settlers had complied with the homestead law, that that would be sufficient?

A. That is the way we interpreted it, yes.

CROSS EXAMINATION.

Questions by Mr. Williams:

Q. Mr. Gildner, did I understand you to say that it was a physical impossibility to get timber out of 9-10?

A. Well, without a railroad.

Q. No. I ask you this question—you said it would be a physical impossibility to get the timber out.

A. I said, in a limited—they could get it out in a limited way down the river; they could get some down the river.

Q. Do you mean to say that a company owning a very large area of that township would not have been justified to build a railroad to get it out?

A. Oh, with a railroad, that is what I say—that is the only way to get it out, is with a railroad.

Q. You can say, then, that a man owning a large timber interest in that township, would be justified in building a railroad to get it out?

A. I hope so.

Q. You said the particular tracts there marked in yellow, sold through the Indian Office, were timber lands?

A. Yes, sir.

Q. What do you mean by timber land, Mr. Gildner?

A. Covered with timber.

Q. Well, how much timber would there be on land to call it timber land?

A. Well, that timber in there runs pretty heavy.

Q. Did you ever estimate the timber on those particular yellow tracts?

A. Well, I think I had them estimated.

Q. You had them cruised?

A. Yes, sir.

Q. Do you know what they cruised per acre?

A. Well, I don't now with me. I can furnish you the data of it, yes. Yes, I have that.

Q. You don't know whether it would run 10,000 or 50,000 feet to the acre?

A. Oh, yes.

Q. Which would it be nearer, ten or nearer fifty?

A. Oh, it would run nearer 70,000.

Q. On those particular yellow tracts? You would be willing to recommend to your clients a sale upon that basis?

A. Well, that is in here.

Q. No, the yellow tracts, if you please?

A. Oh, the yellow tracts in here?

Q. Yes.

A. This will not go quite so heavy.

Q. Not so heavy?

A. This is a very heavy tract right in here. So is this. Oh, yes, I would say they would go 50,000 to the acre.

Q. You would recommend a client of yours, who depended upon your advice, to buy those at that rate—50,000 an acre?

A. I think they would go 50,000 an acre.

Q. That is not my question. From your recollection of what you know of that, now, would you off-hand recommend a client of yours to buy it upon the supposition it had 50,000 feet to the acre in it?

A. Yes, sir.

Q. You would?

A. Yes, sir.

Q. You say that it was the law back in 1900 and 1902, for men to make a little improvement, then after six months, go back on the claim, stay there

a short while, and continue in that way until they made proof?

A. That was the way the law was interpreted at that time.

Q. Interpreted by whom?

A. Well, that is the way that we would naturally—that all the homesteaders thought that the law was until 1905; and at that time the Department made quite a ruling over there. That is, they were stricter.

Q. In other words, when the Department found out what kind of proof was being made, it got stricter in its ruling?

A. They sent inspectors in there, yes.

Q. Yes, sir. Well, now, do you know whether or not these entrymen who went to the lands once every six months, told the Land Office just exactly what they had done on those claims, or do you not know?

A. Well, I do not know that.

Q. You don't know?

A. I know they got their final receipt.

Q. You know they got their receipts, but you don't know what kind of proofs they made?

A. I don't know what they swore to, no, sir.

Q. Did you ever make homestead entry?

A. I did.

Q. For any of these lands?

A. No, I did not.

Q. Well, then, when you said it was a physical

impossibility to get timber out, you meant that if a man did not build a railroad, or go to some expense, he could not get the timber out?

A. Could not get it out, no.

Q. But you have seen rougher country than that logged, haven't you?

A. Oh, it is not very rough country.

Q. A man owning a large interest there would be justified in building a railroad?

A. That is the way, it is all right.

Witness excused.

C. W. Mead, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Hall:

Q. Where do you live, Mr. Mead?

A. In Portland.

Q. How long have you lived in Oregon?

A. About 30 years.

Q. What is your business?

A. Estimating timber.

Q. How long have you followed that business?

A. About 40 years.

Q. Are you familiar with the timber lands in Siletz Indian Reservation?

A. Somewhat.

Q. When did you first become familiar, or visit those lands? When did you first visit that part of the country, that you recall?

A. In 1901 and '02, I think it was, the first time.

Q. Have you been there since that time?

A. Yes, sir.

Q. How often, about?

A. I was there about two years after that. I was in there about 30 days. I haven't been there since. Well, yes, a year ago; about a year ago—a year ago this winter.

Q. A year ago this winter?

A. I was in the lower Siletz country; not the upper Siletz.

Q. Just point out to the jury what you mean by the lower Siletz. There is a stick right there by you, Mr. Mead.

A. I was along the coast there, and in around just above the bay. That is what I call the lower Siletz, close to the bay.

Q. Well, I wanted to know what it was. When you were over there in 1901 and '02, will you point out what portions you were over?

A. I was in around the head of tide—the tide comes in here above a little postoffice that is in here; right around in this country.

Q. Were you down in 9-10, the next township south of where you indicated?

A. I thought that was the postoffice in here. That is the head of tide.

Q. Tide Creek?

A. No, the head of tide water. The water comes up there—head of the tide.

Q. In what stream?

A. Well, that is the Siletz. That is what we call the lower Siletz, is in here. I was in here.

Juror: What do you mean by lower Siletz? Do you mean the lower farm, or lower river?

A. Well, the lower Siletz is down towards the bay. That is what I call the lower Siletz.

Juror: That would be this way of the head of time, then?

A. It would be below the tide. It would be west of the head of tide, yes, sir.

Q. Now, in traveling through that country, what did you see in the timber lands in the way of farms or improvements up there in the Siletz country?

A. Close by Siletz River there were some pretty good farms.

Q. I say in the timber, though; in the timber.

A. Well, there were homestead cabins; very few people, if any, living in them.

Q. And what was the character of improvements around them; how much land cleared, if any?

A. Well, some places there was pretty good cabins built, and perhaps an acre—from half to an acre of ground cleared around it usually.

Q. What was the fact as to whether or not the cabins were deserted after final proof?

A. I think the most of them were deserted, yes sir.

Q. Then, do I understand you to say that ther

is any residence there to speak of, outside of along the streams?

A. No, sir; that is, except on the Reservation up at the head of tide; from there on up to the Agency, there was people living—Indians and some white people.

Q. That is near the settlement?

A. Nothing north of the river. Anything north of the river, there is no one living there in that country.

Witness excused.

John P. Savage, called for the defendant, having been previously sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Hall:

Q. You have been sworn, I think, Mr. Savage, the other day?

A. Yes, sir.

Q. And I think you testified that you lived over in Tillamook County—in Lincoln County?

A. What did you say?

Q. I think you testified the other day you lived over in Lincoln County?

A. Yes, I live in Lincoln County. You will have to speak pretty loud. I am pretty hard of hearing.

Q. How long have you lived over there?

A. Well, I have lived where I am living now or in that vicinity, in the lower Siletz, that is, lower farm, since 1901.

Q. Could you point out on the map there with this pointer where that is?

A. Well, I don't know whether I could see that on that map. I could tell you where it is.

Q. All right.

A. I live in Township 9 South, Range 10 West, Section 21.

Q. Is that on the Siletz River?

A. Yes, sir.

Q. How long have you lived there?

A. Well, I have lived there, with the exception of when I was on my homestead—I will give it as near as I can—I have lived there in Section 21, 20 and 21, since 1901. With the exception of what time I was on the homestead in Section 12, 9 South, 10 West.

Q. Have you been over or through the timber around in 9-10, and in other portions of the Reservation?

A. Well, quite a lot.

Q. Have you had occasion to examine the improvements made by settlers throughout that country?

A. Well, yes, a few times.

Q. What kind of improvements did homesteaders make over there, generally?

A. Not very good.

Q. Well, just describe them generally.

A. That is, in regard to their houses and their clearings, I presume.

Q. Yes.

A. Well, some of them had clearing, some had a half acre; that is, clashed off—it was not grubbed. That is that away from the river, you understand.

Q. Yes, take land away from the river.

A. Yes, up on the hill. Some had an acre cleared and seeded, some of them, not all; but as soon as they quit it, it growed up again to the brush.

Q. Well, now, when they made their final proof, did they stay there any longer?

A. No, sir, not many. Probably there was a few, but the majority went away.

Q. Are there many people living there in the woods now, on those timber claims?

A. No, sir.

Q. That you know of?

A. No, sir.

Q. Do you know of any?

A. None on the homesteads; that is, in the timber, none.

Q. Would it be possible for a man to make a living on a homestead in the timber there?

A. Well, he couldn't very well, no; not if he had to stay there, and make it there, he couldn't.

Q. Yes.

A. No, a man couldn't live there.

Q. What kind of cabins did they build, usually?

A. Oh, some of them built log cabins about 10x12, the average cabin; some of them were a little larger; some of them a little less; but the

average cabin about 10x12. Some were built of logs, some were built of shakes, split boards, set up endways.

Q. Is that the general character of settlement and improvement that was made throughout that Siletz country?

A. Yes, sir.

Q. In the timber?

A. Yes; in 1901 and '02, along there. Later on, along 1909 and '10, of course, others got in there. Some that contested and went out on those claims put up pretty good cabins. Of course, they had to, because they was afraid they would lose it; and they naturally built pretty good cabins, some of them, on the claims that was lost out on.

Q. Did they live there after they proved up?

A. A good many of them went as soon as they made proof, too—the majority.

CROSS EXAMINATION.

Questions by Mr. Williams:

Mr. Savage, what would be the average cost of such cabins as they had there at that time? At that time, what would it cost to build such a cabin, average cabin?

A. Well, I really don't know what it would cost. I never built any cabin—I did build three, three cabins, for $25 apiece.

Q. $25 apiece?

A. Yes, $25 apiece.

Q. Would they average up with the cabins that were there?

A. Well, they would a little more than average, two of them. One of them was about an average with the old style of building cabins; but two of these, mind you, I built 12x14, in the clear, 7-foot wall, and floored them. The old style cabins had no floor; ground floor.

Q. Do you remember the names of the settlers for whom you built those cabins?

A. Yes, sir. The first one I built I built for a man by the name of W. H. Conant in Section 29, 8 South, 10 West.

Q. Did you build any in 9 South, 10 West?

A. Yes, I built two. One I built for a man by the name of Burkhart, lived near Albany, in Section 6, the southwest quarter of the southeast quarter of Section 6, 9 South, 10 West. The other one I built in—there were three forties in 8, on the north line, between 8 and Section 5, and one forty in 7, 9 South, 10 West, for this man's sister. Her name was Burkhart at the time I built this cabin. She afterwards married a man by the name of—well, it don't matter what his name was. These two cabins were 12x14, and 7-foot walls. They were, built of split shakes; that is, the woman's cabin and the other man's cabin; her brother's cabin of logs, logs 12x14, and floored, and doors and windows put in; that is, one window. Those were an exception among cabins.

Q. Well, are you familiar with the cabins that were built on the claims in Sections 3 and 4, and southeast from that, on the entries of Anthony Gannon, Depue, and Gillis?

A. Depue's cabin I never seen.

Q. And Hunter?

A. I have been at Mr. Hunter's cabin; also Anthony Gannon's, and this one you speak of before, the north half of the north half of Section 4, 9 South, 10 West, Mr. Gillis?

Q. John L. Wells?

A. Mr. Conner has two forties in 3 and two in 4.

Q. What I want to get at is this: How did the cabins on those claims compare with the ones you built?

A. Well, they was as good as one that I built, but not as good as the two that I speak of that I put floors in.

Q. What did they cost, the ones you built and put floors in?

A. They cost $25 apiece.

Witness excused.

John L. Wells, called for the defendant, having been previously duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Hall:

Q. Mr. Wells, were you in the courtroom when Mr. Frank Hummel testified?

A. Yes, sir.

Q. Did you hear his testimony to the effect that when you presented him the contract for signature, or the proposition for him to go over and take up a homestead claim, that you told him that he didn't have to live on the claim? Did you hear his testimony to that effect?

A. I did not.

Q. Well, what is the fact? I will ask you whether or not you made any statement to Mr. Hummel to the effect that he would not have to live on this claim?

A. I didn't make no such statement.

Q. Beg pardon?

A. I didn't make any such statement.

Q. I will ask you whether or not you made any such statement or representation to any of these entrymen?

A. I did not.

Q. Or whether or not there was anything else represented to them except that which was contained in the written contract?

A. That is all I did, in the written contract.

Q. Now, did you hear the testimony of the witness George West, about the manner of the execution of his mortgage?

A. I heard it.

Q. Now, did you hear the testimony of Mr. West that you folded over a paper so that he couldn't

see what the paper contained, and obtained his signature to some paper?

A. I heard his testimony, yes.

Q. Tell the jury what there was of that, if anything?

A. Me hiding the purpose of the paper?

Q. Yes.

A. I hid up nothing—don't know—it was a surprise to me that Mr. West would make such a statement as that, a man of his standing, financial standing, and his standing in the community. I don't understand it.

Q. Did you do anything that you know of, to deceive Mr. West?

A. I did not, nothing at all. I couldn't do it, because the fact is he is a man of standing, a man of property and wealth.

Q. The mortgage which has been introduced in evidence as defendant's Exhibit A purports to have been acknowledged by Thad S. Potter, Notary Public, and your name does not appear on it. Do you know whether or not you were present at the time of the execution of it?

A. Let me see that a moment, please. I never seen the paper, and knew nothing of it. The fact is, I don't know—I can't call to mind any paper that Mr. West signed before me. I don't remember of anything. He might have signed something, but I don't remember anything.

Q. Now, did you hear the testimony of Mr.

Rilea in regard to the remark by you to him at the time of making final proof, either on his claim or some other claim, wherein he claimed that when he asked you what he should testify to, that you told him to tell the same yarn that you did?

A. I never said anything of the kind at all. I heard him make the statement here, but it was false. I never made such a statement at all. I heard him make that statment here.

Q. Did you in any way endeavor to tell Mr. Rilea what he should testify to in his final proof or as a witness?

A. I did not. The fact is, I was not present when he made his statement.

Q. Beg pardon?

A. I was not present, and I didn't hear him make his statement.

Q. You didn't hear the statement in court?

A. I heard it here; but at Oregon City I didn't hear it; I wasn't there.

CROSS EXAMINATION.

Questions by Mr. Haney:

Q. Mr. Wells, whom were you acting for in your activities in this whole matter?

A. I was acting for Mr. Jones.

Q. Now, this is a long time ago. Might you not be mistaken as to not having spoken to Mr. Rilea and Mr. West and Mr. Hummel?

A. I am not. In what they stated here on the platform, in the chair, I am not.

Q. Well, with reference, for instance, to Mr. Rilea, you are positive you did not make any such statement to him up at Oregon City, where he proved up?

A. I am positive.

Q. Why are you positive of that?

A. Because he was on the inside and I was on the outside.

Q. You were there, were you not?

A. I was there. I think I was there. I feel positive I was in the room somewheres.

Q. I understood you to say just a moment ago, in answer to Mr. Hall, that you were not there.

A. Well, I didn't mean that I was not there, but I was not on the inside. I was not on the inside, where the testimony was given. That is what I mean.

Q. As a matter of fact, you were one of his proof witnesses, were you not?

A. I think perhaps I was.

Q. On how many of these old soldiers' claims were you a proof witness?

A. There was four or five of them, I think.

Q. Weren't there a great many more than that that you were a proof witness?

A. Well, there might have been more. Yes, there might have been more. I couldn't tell. I was there in the room, but not inside.

Q. At whose request were you a proof witness?

A. I think I was a proof witness by the request

of some of the parties, and also I was down with them; I went down with them, and seen their claims, and knew about as much about their claims as any other man of the party.

Q. When did these claimants that you say might have asked you to act as their proof witnesses first ask you to act as their proof witnesses?

Mr. Hall: If the court please, that is not proper cross examination, because I did not go into that. I went into one specific case.

Mr. Haney: You went into two specific cases that arose at the time of making final proof, and the witness said he did not make the statements that the former witnesses ascribed to him. Now, it seems to me I ought to have permission to go into the question of how he came to be there as a witness at all.

Mr. Hall: That is their case in chief, your Honor. I merely called this witness for the purpose of rebutting the testimony given by Mr. Rilea and Mr. Hummel and Mr. West.

Court: I will overrule the objection.

Exception allowed.

Q. Now, Mr. Wells, when did these claimants first ask you to appear as their proof witnesses?

A. When, you mean? About the time that they proved up?

Q. Yes. I don't mean to fix the date.

A. Well, I don't know. It was generally under-

stood among ourselves that we would be witnesses for each other.

Q. Well, now, for instance, you were a witness for Mr. Rilea?

A. I presume I was.

Q. Mr. Rilea asked you to be a witness for him?

A. Yes, I am positive he did.

Q. When did he ask you to be a witness for him?

A. Well, I don't know just when, what time, before or after, but at some future time I was, because I went down with Mr. Rilea most every time that we went down to the claims; I knew more about his claim, knew more about the time he was down there, than I guess any other one of the comrades.

Q. Then he must have asked you at the time you were up making final proof?

A. Well, I don't know; I think not then.

Q. When did he do it?

A. It must have been before that, for the fact is that I think we had in the advertisement I was to be his final proof witness; that is, witness for his final proof.

Q. But you didn't publish the advertisement?

A. No, I didn't publish it.

Q. Rilea didn't publish the advertisement?

A. No; but anyhow—

Q. What makes you think prior to that time he had asked you to be a witness?

A. Well, it is a long while ago, and I can't just call to mind how the thing was arranged, anyway.

Q. If you were a proof witness in the final notice, it must have been four or five weeks prior to the time of final proof. Now, do you want the jury to understand that each one of these claimants for when you acted came around and asked you if you would be a proof witness four or five weeks before the time of final proof?

A. Well, I won't say about that, because I know we talked the matter over, I think, the last time we were down there to the claims, that we would be witnesses for each other.

Q. Whom did you talk it over with?

A. With the claimants.

Q. Which ones were down there with you the last time?

A. Well—

Court: I think you are getting outside of cross examination.

Mr. Haney: Very well, your Honor. I think it is going a little far. That is all.

REDIRECT EXAMINATION.

Q. Now, Mr. Wells, I will ask you whether or not you had any authority to act for Mr. Jones for any other purpose than securing the names of these old soldiers and getting them to sign a contract?

A. I had not. I had no authority whatever.

Q. And that was the limit and extent of your authority from Mr. Jones?

A. Yes, sir.

RECROSS EXAMINATION.

Q. One other question. Did you give notice to the various claimants at the time it was necessary for them to go down to the Siletz?

A. Did I visit them?

Q. No, did you give notice to them that it was time for them to go down to the Siletz?

A. Well, I think some of them I did ask them.

Q. Were you acting for Mr. Jones in that matter?

A. No, I didn't ask Mr. Jones.

Q. Were you acting for Mr. Jones?

A. Well, it was only in the way of the convenience, that I knew the men, some of them.

Q. Yes, but you were not acting for yourself?

A. I was not acting for myself.

Q. You were not acting for the old soldiers?

A. I was acting for the convenience of the men that filed on the claims, for I knew them, because a great many of them came to my office and had their pension papers made out; and I met them.

Q. You were the man that notified the old soldiers as to when they should go down to the Siletz, weren't you?

A. Not all of them.

Q. Well, most of them?

A. Most of them, I think.

Q. In doing that, you were acting for Mr. Jones, weren't you?

A. I was acting for Mr. Jones, yes.

REDIRECT EXAMINATION.

Q. Did Mr. Jones ask you to do that?

A. Well, I don't know whether he did or not.

Q. It wasn't a part of your employment, however, was it?

A. No, it was nothing to me, only just accommodation.

Q. Now, isn't it a fact, Mr. Wells, that you were the Adjutant of the Grand Army, and as such were rather the head of the organization in this state?

A. Yes.

Q. And that a good many of those old soldiers looked up to you, and came to you for advice on many subjects?

A. Various subjects; pensions and otherwise.

Q. In regard to their pensions?

A. Yes.

Q. And they also talked with you in regard to these claims?

A. They did, yes.

Q. And I will ask you whether or not you didn't have interest enough in the old soldiers to notify them when they should go down, so that their six months would not expire?

A. Yes, sir.

Q. Is that the fact?

A. That is a fact, yes, sir. I had interest enough in them, yes. You mean I had interest enough in them?

Q. Yes.

A. Yes, I did. I had a great deal of interest in them. My thought was for their comfort and benefit.

Excused.

Adjourned until 10 A. M.

Portland, Oregon, December 10, 1918. 10 A. M.

Charles H. Carey, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Hall:

Q. You reside in this city?

A. I do.

Q. How long have you resided here?

A. About 35 years.

Q. And what is your business or profession?

A. I am a lawyer.

Q. And how long have you practiced that profession?

A. Just about that length of time.

Q. Are you acquainted with Willard N. Jones?

A. I am.

Q. How long have you known him?

A. I should say perhaps twenty years.

Q. Do you know what his reputation in this community is for honesty and integrity?

A. I do.

Q. Is it good or bad?

A. It is good.

Excused.

John A. Keating, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Hall:

Q. You reside in this city, Mr. Keating?

A. Yes, sir.

Q. How long have you lived here?

A. About 19 years.

Q. And what is your business?

A. I am a banker, sir.

Q. What bank are you connected with?

A. I am president of the Lumbermens Trust Company.

Q. And are you acquainted with Mr. Willard N. Jones?

A. Yes, sir.

Q. How long have you known him?

A. About 12 years.

Q. Do you know what his reputation in this community is for honesty and integrity?

A. Yes, sir.

Q. What is it? Is it good or bad?

A. It is good, sir,

CROSS EXAMINATION.

Questions by Mr. Haney:

Q. Mr. Keating, did you ever know anyone that had a reputation for honesty and integrity that was bad?

A. I have known some that are very questionable.

Q. Never knew any that were bad?

A. Why, I think so, yes. It is difficult to answer it without recalling specific instances.

Q. Well, an instance or any instance that you can recall, where a man had a bad reputation for honesty and integrity.

Mr. Hall: If the court please, I don't think it would be proper cross examination to have this witness detail here the names of persons who had a bad reputation in this community.

Mr. Haney: I am not going to ask that. I have not asked it, and don't intend to. But in the case of anyone who had a bad reputation for truth and veracity in the community, his reputation was good until the happening of a certain event, wasn't it?

A. Possibly.

Excused.

J. P. Kavanaugh, called as a witness on behalf of defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Hall:

Q. You reside in this city, Judge?

A. Yes, sir.

Q. How long have you lived in this city?

A. In Portland?

Q. Yes.

A. In the state all my life, and in Portland since 1891.

Q. What is your present occupation?

A. Circuit Judge.

Q. Of Multnomah County?

A. Multnomah County, Fourth Judicial District.

Q. How long have you occupied that positoin?

A. Since June, 1910.

Q. What official positions have you held prior to that time?

A. City Attorney, City of Portland; Assistant City Attorney.

Q. Are you acquainted with Willard N. Jones?

A. Yes, sir.

Q. How long have you known him?

A. Oh, I presume 20 years.

Q. Do you know what his reputation is in this community for honesty and integrity?

A. I have heard it discussed, yes.

Q. Is it good or bad?

A. Good.

CROSS EXAMINATION.

Questions by Mr. Haney:

Q. You are a personal friend of Willard N. Jones, aren't you?

A. Not a close friend. I have known him, but I have never been intimate with him.

Q. He is a neighbor of yours?

A. Not that I know of.

Q. You have tried a good many criminal cases since you have been judge, haven't you?

A. A good many, yes.

Q. Did you ever know of a case where a man was convicted in a criminal trial where there had been a number of witnesses testify to his good reputation?

A. Oh, yes.

Excused.

R. E. Williams, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Hall:

Q. You reside in this city, Mr. Williams?

A. Yes, sir.

Q. How long have you lived in Portland?

A. I have lived in the state all my life, and in Portland since 1911.

Q. Where did you live prior to coming to Portland?

A. In Dallas, Polk County; born there.

Q. What position, if any, do you hold in regard to National politics?

A. I am at present National Committeeman, Republican party.

Q. How long have you held that position?

A. Since 1908.

Q. That is an elective position, is it not?

A. It was elective by the delegates in 1908 and 1912, and then changed by a state law to election by the electors of the state in 1914, and I have been elected twice since.

Q. What is your business, Mr. Williams?

A. I am in the banking business.

Q. Are you acquainted with Willard N. Jones?

A. Yes, sir.

Q. How long have you known him?

A. Probably fifteen years.

Q. Do you know what his reputation in this community is for honesty and integrity?

A. I do.

Q. Is it good or bad?

A. Good.

CROSS EXAMINATION.

Questions by Mr. Haney:

Q. Have you heard a good many people discuss his reputation for honesty in the community?

A. I have.

Q. What was the occasion for such discussion?

A. Well, this trial mainly; partly a former trial.

Q. Some discussion pro and con?

A. Yes.

Excused.

Robert S. Farrell, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Hall.

Q. You live in the city, Mr. Farrell?

A. Yes, sir.

Q. And how long have you lived here?

A. 48 years.

Q. And what official positions, if any, have you held?

A. I am at present State Senator.

Q. You are at present State Senator. You have also been a member of the House?

A. I was a member of the House.

Q. What is your business?

A. Commission merchant, salmon packer, and logger.

Q. What is the name of the firm?

A. Everding & Farrell.

Q. That firm has been established here how many years?

A. 52 years.

Q. Are you acquainted with Willard N. Jones?

A. I am.

Q. How long have you known him?

A. About eight years.

Q. Do you know what his reputation in this community is for honesty and integrity?

A. I do.

Q. Is it good or bad?

A. Very good.

CROSS EXAMINATION.

Questions by Mr. Haney:

Q. Is Mr. Jones a neighbor of yours, Mr. Farrell?

A. Not a neighbor, no. I think he lives at Mt. Tabor. I live on the West Side.

Q. Have you heard his reputation for honesty and integrity discussed a good deal?

A. Pardon?

Q. Have you heard his reputation for honesty and integrity discussed by various people?

A. Nothing to speak of.

Q. Then, really it is your own opinion that you are giving, rather than what the general public thinks of him?

A. My opinion, yes.

Excused.

Mr. Hall: If the court please, I understood the rule used to be that the limit on this kind of witnesses is five. Is that still the rule?

Court: I have usually held it six.

Mr. Hall: Well, I only summoned five. I understood Judge Bellinger's rule used to be five.

Court: I don't know what his rule was.

Mr. Hall: The Circuit Court is five.

C. B. Moores, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Hall:

Q. Where do you reside, Mr. Moores?

A. In Portland.

Q. How long have you lived here?

A. For the last ten years I have lived here.

Q. And where did you live prior to that time?

A. Salem.

Q. How long did you reside in Salem?

A. I resided at Salem over forty years.

Q. Have you held any public positions in this state, Mr. Moores?

A. Yes, sir.

Q. What public positions have you held?

A. I was Speaker of the House of Representatives once, Register of the State Land Office; at present member of the Portland Dock Commission.

Q. When were you Register of the Land Office?

A. From 1897 to 1903.

Q. At Oregon City?

A. Oregon City, yes.

Q. Do you know Willard N. Jones, the defendant here?

A. Yes, sir.

Q. I will ask you if you recall, Mr. Moores, while you were Register of the Land Office in the year of about 1900, Mr. Jones presenting to you a

proposed contract or agreement, to be entered into between himself and some old ex-soldiers, for the taking up of homesteads, as to whether or not that was in violation of any of the rules or laws of the United States?

A. Yes, I remember having an interview with him at one time.

Court: Was that while you were Register of the Land Office?

A. Yes, sir.

Q. Could you identify the contract by looking it over, Mr. Moores?

A. Well, I don't know whether I could or not, Mr. Hall. It has been fifteen or twenty years since that conversation took place, the interview I had with Mr. Jones. I remember in a general way the circumstance, and the nature of the contract, but I cannot swear that I can identify it at this time.

Q. Well, will you state what advice or opinion you gave to Mr. Jones, as to whether or not this proposed contract which he then presented to you was in violation of any of the rules, regulations, or laws of the United States, relating to the taking up of homesteads?

A. Well, I remember this: I advised him that the Land Office had formerly held that loans could be made to proposed entrymen to meet the expenses of improving their claims or paying the fees, and a contract with the entryman to mortgage the place after he secured title would be entirely legal under

the decisions of the Land Department, providing there was no contract of any kind to the effect that he was to sell to the party loaning the money; if there was any contract of that kind, it would vitiate the filing, the entry.

Q. And as you recall, did you see anything wrong with the contract, provided that it was in good faith, and that it was intended to be carried out in accordance with its terms?

A. I remember I gave him my opinion that the contract was not obnoxious to the law, if there was nothing in the contract providing that the entryman should make a sale of the land to him when he secured his patent; therefore there was nothing in the contract that I saw.

CROSS EXAMINATION.

Questions by Mr. Williams:

Q. Mr. Moores, you wouldn't be able to identify that contract now, I believe you said?

A. I doubt if I would. It has been so long since I saw it. It related, however, to entries made by ex-soldiers upon timbered lands in the Siletz Reservation, or what we call the Siletz country.

Q. But you don't remember every provision that there was in that contract?

A. No, I couldn't say that I could. I simply passed upon the proposition as to whether or not the contract was illegal; that is, whether there was anything in it that would tend to vitiate the entry made by the entryman.

Q. You did not first submit that contract to your superior, the Commissioner of the Land Office at Washington, did you?

A. Oh, no. It was never placed in my hands for that purpose.

Q. You just gave him your personal opinion?

A. Yes. But I based the opinion that I gave to Mr. Jones upon what I knew of the decisions of the Land Office in cases analagous to the one that was under consideration.

Q. Well, did I understand you to say that you told him they might mortgage their homesteads?

A. What?

Q. Did I understand you to say that you told Mr. Jones the soldier might agree to mortgage his homestead?

A. I didn't hear you. Just one word there I didn't catch.

Q. Did I understand you, in answer to Mr. Hall's question, to say that the soldier might legally mortgage his homestead?

A. After he had secured title, providing the money was secured simply for the purpose of improving the land and paying the entry fees, and matters of that kind.

Q. Well, did you tell him he could agree to mortgage his homestead before he got his patent?

A. That was my understanding of the rulings of the Department.

Q. In other words, he could not mortgage it be-

fore he got patent, but he could agree to mortgage it?

A. Yes, sir.

Q. Did you understand that the land would be liable for that mortgage?

A. Yes.

Q. As the register of the Land Office, you were familiar with the homestead laws, were you not, Mr. Moores?

A. Yes.

Q. Are you familiar with that section of the Revised Statutes which expressly declares that land acquired under the homestead laws shall not be liable for any debts contracted prior to the issue of the patent?

A. I was satisfied then, and I am satisfied now, that the decisions of the General Land Office were to the effect that money secured by the entryman from anyone, and by him secured upon the land he got, he could properly enter into a contract of that kind without vitiating his entry.

Q. But did you think that the land could be held liable for that debt?

A. I did, yes.

Q. In the face of that direct provision of the statute?

A. I doubt whether that is a direct provision of the statute. It certainly is not in conformity with the decisions of the General Land Office, as I recall it.

Mr. Hall: If the court please, that question has been directly settled by the Supreme Court of the United States.

Court: I understand the rule to be that the homestead is not liable for previous debts, but that a homesteader may waive that right and mortgage his land for the debt. That is so held by the Supreme Court of the State of Oregon.

Mr. Williams: If your Honor please, I asked the witness if he understood that the land could be held liable for that debt.

Court: Under the contract?

Mr. Williams: Yes, sir.

Court: That is a different question.

Mr. Williams: He said he didn't think the law provided that.

A. Presupposing that the money was borrowed for the purpose of improving the homestead and paying the entry fees, that in that case the land could be held liable if there was a preliminary agreement.

Mr. Hall: So held by the Supreme Court of the United States, your Honor.

A. I think that was the uniform decisions of the Land Office. That is my recollection of it. That was my opinion at the time.

REDIRECT EXAMINATION.

Q. Mr. Moores, you say you were the Register?

A. Yes, sir.

Q. Who was the Receiver?

A. Judge Galloway.

Q. Where is Judge Galloway?

A. Well, his home is in Salem; it is either in Salem or Yamhill County. He has a farm in Yamhill County. I think his legal residence is in Salem.

Witness excused.

Willard N. Jones, called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Hall:

Q. Mr. Jones, you are the defendant in this case?

A. I am.

Q. And what is your present occupation?

A. For the past seven or eight years, I have been farming.

Q. And what class of farming?

A. General farming, including dairying.

Q. And where is your farm located, Mr. Jones?

A. Near Clifton, Oregon, Clatsop County, Oregon.

Q. When did you first come to Oregon, Mr. Jones?

A. In 1891; June, 1891.

Q. And what business did you follow here?

A. I was employed in the City Engineer's office from 1891 most of the time until 1897.

Q. Working on a salary?

A. Yes, Assistant City Engineer.

Q. Now, I will ask you, are you a man of family?

A. I have a wife and six children.

Q. And what business did you next follow, either after or in conjunction with your employment in the City Engineer's Office?

A. Well, I lost my position in 1897, and went back East, and I was in Pennsylvania, where I was born and raised. I came back to Oregon in 1898.

Q. What means did you have at that time?

A. When I came back here I secured a position in the County Surveyor's office, and while so employed I started to deal in land scrip, buying and selling of land scrip.

Q. What is the land scrip that you dealt in?

A. Under certain laws of Congress, the owner of lands inside of forest reserves, could transfer their land to the Government, and select other lands outside of the reserves in lieu; and that was the kind of scrip that I was dealing in at that time.

Q. How long were you employed at that, Mr. Jones, about how long?

A. Oh, for several years.

Q. Now, when did you first take up this question, if you did, of locating soldiers' widows on Government lands?

A. In the year eighteen—well, the year 1900, I think it was.

Q. What first attracted your attention to that, or induced you to go into that business of location?

I will ask you, before I ask you that question, Mr. Jones, whether in dealing with your land scrip you became familiar in any manner with the public lands in the State of Oregon and Washington, as to what lands were available?

A. Yes. I visited nearly all the different sections of Oregon, made examinations to find out what land was available for the location of scrip, and the location of settlers.

Q. In making such investigation, did you also learn of lands that were available for homestead?

A. Yes, sir, for the location of homesteaders.

Q. Now, you may testify as to what first drew your attention to the location of soldiers' widows on Government land?

A. Well, when I was coming out to the coast, on the Northern Pacific train, I saw a circular. That was in 1889—issued by the Northern Pacific Railroad Company, and setting forth the rights of settlers to take land, and among other things it said that soldiers' widows might take lands, might take a homestead, and make proof without any residence or settlement.

Q. Without residence?

A. Without any residence or settlement.

Court: Whose advertisement was that?

A. That was a circular issued by the Northern Pacific Railroad Company. So in about the year 1892 my mother came out to visit me, my mother and brother.

Q. 1892?

A. About 1892. And my father having served throughout the Civil War, my brother was entitled to a claim under that law as a minor heir of my father; and we found a claim, bought a relinquishment a little east of Castle Rock, Washington—Silver Lake. I came down to the Land Office at Vancouver, made some inquiries there of the Register in regard to the law, and he assured me that there was no residence required; so that an entry was made on this land, and after the proper period elapsed, something like a year, final proof was made. No proof of residence was made; and the proof of cultivation was done—the cultivation was done by people whom we had hired to do the cultivating. And a very short time after the final proof, patent was issued.

Q. Any question ever raised about the title by the Government?

A. Never.

Q. Then what did you do along about the year of 1900, as you have testified, with regard to locating the widows of other soldiers upon Government land? Just tell the jury.

A. I heard about this land being taken on the Siletz, and I sent Mr. Mead over to make an examination of it—cruise it; and I had in mind at that time to locate soldiers' widows on the land; and I had a contract prepared by Mr. Potter, that he assured me was legal and valid in every way. I

then went to see Mr. Wells, to see if he could secure the signatures of widows, Mr. John L. Wells.

Q. Why did you go to Mr. Wells?

A. I went to Mr. Wells because he was Adjutant General of the state, Adjutant General of the G. A. R. of the state, and as such knew all or a great many of his comrades.

Q. Go ahead, now.

A. After he had secured the signatures of thirteen or fourteen, he ascertained that there were not very many more soldiers' widows who were eligible for claims, and he came to me and suggested that he would like to take a claim, and he had many of his comrades who would like to take claims. And after considering the matter, I told him that I would be able to change the contract so that they could also take claims over there. That contract had been passed upon by Mr. Potter, who was, as I considered, a qualified attorney. And soon after, the first filing was made up at Oregon City. It was mentioned, I think, in the presence of the officers up there, that the people who were filing did have a contract on the land, without stating what it was. And Dr. Loomis, who was the Special Agent of the Land Office located at Oregon City, came to our office and asked to see the contract. Mr. Potter showed him the contract, and told him all about the circumstances. He took that contract away, and in three or four days sent back word that it was all right; there wasn't any-

thing wrong with it. And to satisfy myself further, I took the contract up and showed it to Mr. C. B. Moores, who was the Register of the Land Office at that time, and told him all about it, and the circumstances, and he assured me also that it was a legal contract, and there was nothing wrong with it. Then to make further assurance, I took the contract to Mr. John H. Hall, who was then United States District Attorney, so that both the Interior Department and the Attorney General's office would know what I was doing. And he also assured me that there was nothing in the contract that was illegal, and that it was all right. And then when I found out later that certain special agents were making reports that these entrymen had agreed to sell the land to me, I sent a copy of this contract, with a letter stating all the circumstances, and all the dealings throughout, to Senator Fulton, who was then in the United States Senate, and I told him to file it with the Secretary of the Interior. So that at all times I was consulting with the different officers of the Government, telling them everything that I was doing in regard to this matter, and I had their assurance that everything was all right.

Court: Do you know whether that was filed with the Secretary of the Interior?

A. It was filed, yes, sir.

Q. Mr. Jones, just explain to the jury now what you did in regard to the location, first, of

these soldiers' widows, that has been brought in here for the purpose of showing an unlawful intent in this case, and I wish you would make your explanation to the jury, just what you did there, and what your intentions were, particularly as to whether or not you intended ultimately to gain title to any of those lands. Just state what you did in regard to that.

A. My intention was only to locate those widows on the land for what there was in it as a locating fee, and whatever profit might be made in cultivating the land, which I didn't figure was very much; and as I understood the law at that time, there was no residence required, and I had satisfied myself that they had a perfect right to hire the cultivating and improvements made, whatever was necessary; and that contract was made with that understanding. When they made their final proof, they made no proof of any residence. In fact, they stated, as I saw—I didn't know what the final proof was at the time; but as I saw the final proof papers which were introduced here in evidence, they didn't make any proof of residence when they made their final proof. Unfortunately, I was not conversant with a certain decision of the Interior Department wherein it was held that a soldier's widow had to identify herself with the land by some act of settlement; and those entries were held up, and were finally cancelled, because there had been no identification, because the entrywoman

had not identified herself with the land by some act of settlement.

Q. Now, do you remember where that is, what decision that is, Mr. Jones?

A. Why, that is the so-called Dickey decision, in the 22nd Volume of the Decisions of the Interior Department.

Q. That was the case of Ella I. Dickey?

A. Yes, sir. That decision never came to my attention until after the final proofs, and the mortgages were given to me on these soldiers' widows' claims.

Q. Now this decision holds that the word "residence" and "reside upon" do not occur in Section 2307, but it is provided that the entry shall be subject to all the provisions as to settlement, improvements, etc., holding apparently that it would be necessary for the widow in a formal way to go upon the land at some time.

A. That was the holding at that time. There had been in 1892, when this claim that I mentioned was taken up, no such holding. This was the first holding, as I understand it, that the soldier's widow had to identify herself with the land that she took.

Court: Do you mean by that that she had to settle upon the land?

A. She had to go on the land, and say to herself, or to anybody who might be present, that she was claiming this land as her homestead.

Q. Something apparently similar to the old doc-

trine of seizin under the old English law, as they say here: "We have just seen that Section 2307 does not expressly require residence, but does require settlement. We have further seen that settlement is not synonymous with residence, and finally we have seen that the term 'settlement' as used in the section under consideration does not imply residence; and has it then any definite meaning in this connection. I take it to mean personal identification in some manner with the tract claimed." That was decided in March, 1896?

A. Yes, sir.

Q. You say you were not familiar with that holding at the time that you entered into this arrangement with the widows?

A. No, sir. I understood that they would not have to identify themselves with the land, or would not have to visit the land.

Q. Well, as a layman, would you have known what was meant by identifying themselves with the land?

A. No; I would not know positively now, what was meant by the decision.

Q. Now, what arrangement, if any, did you have with these widows about any of this land being conveyed to you?

A. I had no other or further arrangements than were expressed in the contract, and no arrangements whatever that the land was ever to come to me, that I was ever to get the land.

Q. Were there houses to be on those?

A. There were no houses to be built, because residence, as it was thought, was not required.

Q. Did you do any cultivation, clearing and improvement?

A. I procured the same to be done, yes, sir.

Q. And you paid for that?

A. I paid for it, as provided in the contract.

Q. And what did you do about advancing filing fees, things of that kind, expenses?

A. I advanced filing fees.

Q. At their request?

A. Always at their request.

Q. Now, what was done about offering proof at the Land Office? Did any of them make proof at the Land Office?

A. Yes, many of them made proof.

Q. And what was done with them? What was the decision of the Land Office here in regard to them?

A. The proof was accepted here, and final receipts were issued, and on the strength of the final receipts I took a mortgage on the land.

Q. Did you advance them any money or make any loans on this proof?

A. Yes, the mortgage included the moneys that they were to pay me under the contract, and $200 in addition.

Q. Then, what next occurred in regard to the

title in the Land Department? Was there any contest filed, or anything of that kind?

A. Well, before these final proofs were made by the soldiers' widows, the old soldiers were filing —came running along all at the same time; and they made proofs; and some time after final proofs were made contests were initiated at Oregon City against some of the claims.

Q. Against the old soldiers' claims?

A. Against the old soldiers' claims.

Q. Well, but I want to know what was done with the widows' claims. They went on to the Commissioner of the General Land Office, and what was done there, if you were advised?

A. Well, having a mortgage on the land, I employed an attorney in Washington to fight it through the Department, appeal it to the Secretary of the Interior.

Q. Well, was there an objection raised to the proof?

A. There was an objection raised to the proof on account of the widows not having identified themselves with the land.

Q. Then you employed counsel to assist in establishing their right. Is that what I understand?

A. Yes; I thought they were right. I didn't think it was necessary to identify themselves with the land. So we appealed to the Secretary of the Interior.

Q. And what was the final decision as to

whether or not these widows were entitled to those homesteads?

A. The result was that they were all canceled, and they all lost their claims.

Q. And you lost your money?

A. I lost my money.

Q. Now, take up next, Mr. Jones, the filings by these ex-soldiers, that are here in evidence. You state that Mr. Wells told you there were a number of comrades that wanted to take up homesteads, and that you prepared or had these contracts revised and redrafted; and then what did you do with the contracts? Just state to the jury what you did.

A. After the contracts were signed, I made arrangements—the contracts were signed in the fall of 1900, and I made arrangements—

Q. I want to go back a little bit, Mr. Jones. After the contracts were prepared, what did you do with them—before they were signed? Whom did you give them to, these proposed contracts between yourself and the entrymen?

A. I didn't understand the question.

Q. I say, you had these proposed contracts, as you have testified, prepared between yourself and the entrymen. Were those prepared before the entrymen were secured?

A. Why, yes, they were prepared—that was the first thing that was done, was to prepare the contracts. And those contracts in blank were given to Mr. Wells, and Mr. Wells brought them back to

my office signed. There were very few, if any, of those entrymen that I ever saw at that time. They were signed, not in my presence, or not from any conversation that I had with him or with them; but the signatures were secured by Mr. J. L. Wells.

Q. What is the fact as to whether or not the contracts were uniform, whether they were all the same?

A. The contracts were all the same. There wasn't a variation in any of the contracts. Whatever one signed, they all signed.

Q. And what authority did Mr. Wells have from you to act in the matter?

A. Mr. Wells was authorized to act as my agent in securing names to these contracts.

Q. Did he have any other authority?

A. He had no other authority; after procuring those names and bringing in those signed contracts his authority from me ceased.

Q. What, if any, conversation did you have prior to the signing of these contracts, with any of these nine entrymen? Do you recall the names of them? Take Benjamin Hunter.

A. I never saw him—

Q. What conversation did you have with Benjamin Hunter, if any, prior to his signing the contract?

A. I never saw Benjamin Hunter until after he had signed the contract.

Q. I will ask you whether or not you had an

other or different understanding or arrangement with Benjamin Hunter than that contained in that contract?

A. That contract represented the only contract or agreement that I had with him. There was no other contract.

Q. Was there any other understanding or arrangement?

A. There was no other understanding, express or implied.

Q. Now, I will ask you whether or not you ever got title to the Hunter claim?

A. I had a mortgage on it.

Q. Yes, I know; but was it ever conveyed to you?

A. It never was.

Q. I will ask you whether or not you ever tried to buy it of Benjamin Hunter?

A. I never did.

Q. Now, at the time that you went into this arrangement, Mr. Jones, what were your means? Were you a capitalist at that time?

A. Oh, I had some small means; but I was not a capitalist by any means.

Q. Now, Oliver I. Conner. What, if any, conversation did you have with Mr. Conner prior to the signing of the contract, that you recall?

A. Well, I think Mr. Conner came up to my office, and the contract was signed in my office with Mr. Conner.

Q. And do you remember what conversation you had with Mr. Conner, in substance?

A. I pointed out exactly the provisions of the contract, and told him that I was willing to locate people under that contract.

Q. I will ask you whether or not you made any other or different agreement or arrangement with Mr. Conner, other than was contained in the contract.

A. I did not.

Q. Did you make any agreement, or have any understanding with him that the claim was to be conveyed to you at any time in the future?

A. There was no understanding to that effect.

Q. At the time that you went into these contracts with these men, did you intend or expect that you would acquire title to this property?

A. I had no such intention.

Court: Did you buy his claim?

A. Conner's claim?

Court: Yes.

A. No, sir.

Q. I will ask you whether or not you ever bought Mr. Conner's claim?

A. I did not.

Q. Did you ever attempt to buy it or try to buy it?

A. I did not.

Q. Now, William Teghtmeier. I will ask you

whether or not you had any conversation with Mr. Teghtmeier prior to his signing the contract?

A. No; I never saw Mr. Teghtmeier until after he had signed the contract.

Q. And did you have, prior to final proof, any arrangement or understanding or agreement with Mr. Teghtmeier, either directly or indirectly, whereby he was to make any conveyance to you upon acquiring title?

A. I had no understanding whatever with him that he was to do that.

Q. Did you have any intent at that time to acquire William Teghtmeier's interest, or the interest of any of those men that had signed the contract?

A. I had no intention of doing so.

Q. Now, you eventually secured title to the Teghtmeier claim?

A. I did.

Q. Will you tell the jury the circumstances of that, if you recall it, Mr. Jones?

A. After Mr. Teghtmeier had made his final proof, I prepared the same kind of mortgage that they were all signing, and gave it to Mr. Wells to have Mr. Teghtmeier and his wife execute it. In four or five days afterwards, Mr. Teghtmeier came in the office, and I think with a representative from the office of Mr. Richard Williams, and they showed me a quitclaim deed that had been prepared in Mr. Williams' office, and said that Mrs. Teghtmeier had refused to sign any mortgage, and the attorney said

that he had recommended to Mr. Teghtmeier that they give a quitclaim deed instead of a mortgage; and I told him that I would prefer to have the mortgage, but if they wanted to have a quitclaim deed, I would take the quitclaim deed; and that was executed.

Q. And what was done about paying Mr. Teghtmeier the $200 that was included in the contract, which he was to receive upon the execution of the mortgage?

A. He received the same amount as he would if he had executed the mortgage. $200 was paid him then for that quitclaim deed.

Q. Was it at his suggestion or your suggestion that he made the deed?

A. It came from him by advice of his attorney. I had made no suggestion whatever. In fact, I had told him that I would prefer to have the mortgage, because at that time I was using those notes as securities—collateral at the bank to borrow some money.

Q. Now, Richard M. Depue. Did you ever see Mr. Depue prior to the time of his signing the contract?

A. I never did.

Q. And did you see him, that you recall, after the signing of the contract?

A. Well, I don't recall any particular time of seeing him, but I probably did see him. I didn't

see these old soldiers, perhaps, only once or twice, maybe three times, in all this transaction.

Q. I will ask you whether or not you had any arrangement or understanding or agreement, either directly or indirectly, with Mr. Depue, or anyone acting for him, whereby you were to acquire title to this land?

A. I had no such understanding, no, sir.

Q. And did you ever acquire title to it?

A. I never did.

Q. Did you ever attempt to?

A. I did not.

Q. You never solicited him to sell it to you?

A. I never did, no, sir.

Q. Now, Joseph Gillis. Did you ever have any talk with Joseph Gillis prior to the signing of the contract?

A. I never did.

Court: Did you get the Depue land?

A. No, sir.

Q. Did you authorize Mr. Wells or anyone else to make any representations to Mr. Gillis, or to any of these entrymen, that you were willing to buy the land, or do anything outside of what was contained in the written contract?

A. I never authorized Mr. Wells to make any statement, anything at all, except what was in the contract. The terms of that contract was what we were entering into, and there was nothing outside

of that. He was never authorized to make any statement of anything outside of that contract.

Q. Did you acquire title to the Gillis tract?

A. I did not.

Q. Did you ever endeavor to?

A. I never did.

Q. Thomas Johnson. Did you see Mr. Thomas Johnson prior to the signing of the contract?

A. I don't think so. I don't remember of seeing him.

Q. And if you did see him, did you have any arrangement or understanding with him in regard to the signing of the contract?

A. No, I had no—will you repeat that question, please?

Q. (Question read.)

A. I am quite sure I never saw him before he signed the contract. I don't remember of seeing him.

Q. Well, did you, either before or after signing the contract, and prior to final proof, have any arrangement or understanding, either directly or indirectly, by yourself or through any other person, whereby you were to acquire title to the land?

A. I never had any other arrangement.

Q. Did you acquire title to this tract?

A. I did.

Q. And under what circumstances?

A. He made a mortgage on the land, and some time afterwards he got into some trouble—

Q. About how long, if you know, Mr. Jones?

A. Well, as I remember it, it was three or four months after final proof, and after the mortgage was given, he got in some trouble, and he came up to my office, and he wanted an attorney to help him out, and I told him that I would be very glad to help him. "Well," he says, "if you will help me to get out of this scrape, I will deed the land to you." And I secured Mr. J. J. Fitzgerald to represent him in the case. And just what the proceedings were, I do not remember, but some little time afterwards Mr. Fitzgerald reported that they had fixed the matter up, and Mr. Johnson came in and gave me a deed to the property, and I paid Mr. Fitzgerald.

Q. Who first suggested the conveyance of the land to you?

A. Mr. Johnson suggested if I would get an attorney and help him out in that matter, that he would give me a deed to the land.

Court: Was this after the final certificate?

A. This was three or four months after the final certificate.

Q. How much, if anything, did you pay him at that time in addition to the $720 mortgage?

A. I paid Mr. Fitzgerald, his atorney. I didn't pay Mr. Johnson anything.

Q. Did you, or did you not, comply with the proposition of Mr. Johnson?

A. I did, yes, sir.

Q. Now, John L. Wells' claim. What, if any, conversation did you have with Mr. Wells about his taking up a claim?

A. Well, he knew what the arrangements were with the widows, and when he came to me, and wanted to take a claim himself, he knew that the arrangements would be practically the same as the arrangements with the widows, whereby they were to be located for a certain amount, and I was to build a house for a certain amount, and make improvements, and fit the ground for cultivation, and cultivate it one season for a certain amount. There was no other arrangement made with Mr. Wells on his claim than were made with the others. He knew what the contract called for, and he signed the contract the same as the others signed the contract; and there was no other arrangement with him than with the others.

Q. Did you at that time, or prior to the final proof, did you have any talk or conversation with Mr. Wells, or any arrangement or agreement, either directly or indirectly, that you were to acquire title to his tract of land?

A. I never had any conversation with him at all as to whether or not I was to acquire the title to the land. There was nothing ever said.

Q. Did you acquire title to the Wells tract?

A. I did.

Q. Under what circumstances?

A. Well, during the time that he was securing

signatures to these contracts, I loaned Mr. Wells some money and took his note. I loaned him $100, and took his note. And after he had made final proof and got his final receipt, some little time afterwards, he came to me and suggested that he would sell the land to me if I would return that note for $100; he would give me a deed to the land; and he did so, and I gave him back the note that he had given me for $100.

Q. Did you give him any money besides the note?

A. No.

Q. The note was for $100 and interest?

A. The note was for $100 and interest.

Q. That would make about $820 or something more than that?

A. Well, there was interest on the note, so it would make about $830—$825.

Q. Now, Edward C. Brigham. Did you have any conversation with Mr. Brigham prior to the signing of the contract?

A. No, sir.

Q. Do you recall of seeing Mr. Brigham or talking with him prior to that time?

A. I don't recall ever having talked to him about it.

Q. And did you make any arrangement with Mr. Brigham, either directly or indirectly, whereby you were to acquire—that he was to convey this land to you after final proof?

A. I did not.

Q. Did you acquire title to that tract?

A. I did.

Q. And under what circumstances?

A. Well, some little time after Mr. Brigham had given me the mortgage on the land, and after some of the other entrymen had sold their lands, Mr. Brigham came to me and told me that he would like to sell his land, and that the other old soldiers were selling their lands and were getting $200 above the mortgage and interest; that is, they were getting $200, and the purchasers were assuming the mortgage; and if I cared to buy the land, that he would sell it to me for the same price. And I told him I would think it over. In a day or two he came back, and wanted to know if I wanted to buy it, and I told him that I would. And I did buy it, and paid him $200.

Court: Over and above the mortgage?

A. Over and above the mortgage, yes, sir.

Court: You paid him $200?

A. I gave him $200 at the time I took the mortgage, and then $200 when he gave me the deed.

Q. Then Mr. Brigham got $400 all told for his claim?

A. Yes.

Q. Had you approached Mr. Brigham yourself to buy this claim?

A. No, sir.

Q. Now, Anthony Gannon. Did you have an

talk with Mr. Gannon prior to signing the contract, that you recollect?

A. I do not recall any conversation.

Q. Did you know Anthony Gannon? Did you know any of these entrymen?

A. No, I didn't know any of them.

Q. Did you have any personal acquaintance with any of the entrymen besides Mr. Wells?

A. No.

Q. Did you acquire title to the Gannon tract?

A. I did not.

Q. And did you intend to, or endeavor to?

A. I never did.

Q. I will ask you whether or not you knew that some of these entrymen were selling and offering to sell their homesteads?

A. I told them if they wanted to sell it, to go ahead and sell it.

Q. Well, did you know anything about the negotiations that were going on between some of them and this man Montague? Had that been called to your attention or not?

A. Well, it came to my attention that some of them were selling their claims; yes.

Q. You made no objection to that?

A. I made no objection. I told them that I would expect to have the mortgage paid after they made the sale, after the mortgage became due.

Q. I will ask you whether or not you were chiefly interested in getting the mortgage paid?

A. Why, I was, in fact, well satisfied if they did sell the land to somebody else, so that the mortgage would be paid, and I would get my money.

Q. Were you carrying personally all of these contracts?

A. With the assistance—I was borrowing money at the bank to do it.

Q. Using them as collateral?

A. Yes, sir.

Q. Now, in regard to the other entrymen, whose lands did not go to patent, I won't take up each one of them individually, but I will ask you to state to the jury, Mr. Jones, whether you had any arrangement or understanding with any of the entrymen, to the effect that you were eventually to get title to this land?

A. I had no understanding with any one of them to that effect.

Q. Did you have any other or different understanding with them than what was contained in the contract?

A. I did not.

Q. Did you authorize anybody to make any arrangement other or different than was contained in that contract?

A. I never authorized anybody to make other arrangements.

Q. And would you say that the dealings with these other men, whose claims did not go to patent, and who have testified in this case, were any other

or different than these nine men of whom you have testified?

A. The arrangement with each and every one was identical with the arrangements with the others.

Q. And each one of these men that were not amongst the nine received their $200 and gave you a note and a mortgage?

A. Yes, sir.

Q. For $720?

A. Most of them for $720.

Q. And were those notes and mortgages ever paid?

A. They were not.

Q. Did you ever endeavor to collect any of the notes from these entrymen after their entries had been cancelled?

A. I never did.

Q. Now, do you know whether or not any of these claims that were afterwards cancelled were sold by the entrymen to other parties?

A. I understood that there were quite a number of them had been sold, but they had not received all the money. Part of the money had been paid them, and the balance was to be paid when patent issued. And of course the patent not issuing, they didn't get any more out of it and the people who had contracted to buy did not pay off the mortgages.

Q. The people who contracted to buy of those other parties did not pay your mortgage?

A. No; not on the claims that didn't go to patent.

Q. Do I understand you, then, that the only mortgages that were paid to you, were the five claims that were sold to other parties through Mr. Montague and Mr. Rilea?

A. That is correct.

Q. Were the only ones that you collected the mortgages on?

A. Those are the only ones.

Q. Now, after these contracts were signed up Mr. Jones, what was the next thing that you did toward carrying it out?

A. The next thing was to have the people who had signed the contracts go down and see whether or not they wanted the land. That was in the fall of the year, in October, I think, September and October, in the year 1900. It was first necessary to take them down and show them the land and see whether or not they wanted to take it; and if they did so, they could make their entry at Oregon City and they were taken down there at that time.

Q. Now, what arrangement did you make to have someone show them the lands that you had selected? Or the country that you had proposed to locate them in?

A. I had made arrangements with men who were working for me down there at that time

show them their claims—let them pick out the claims that they wanted, if they had any choice, or if not, that they were to give them the descriptions of the land which they were to take—the men on the ground.

Q. Did you go over with them?

A. I did not.

Q. Now, the contract provides that you are to advance these expenses if required. I will ask you whether or not you did that?

A. I did.

Q. And something has been said about buying round trip tickets. What was the object in buying round trip tickets, not only for the first visit, but for subsequent visits, if any were bought?

A. The first time, of course, they went down to look at the land, and they were to come right straight back and file at Oregon City, after which they were supposed to have six months in which to go on the land. That is called constructive residence. The next time the tickets were bought was in the spring of the year, and round trip tickets were sold over to the beach resorts at that time at practically the same price as a single ticket, and everybody that went over to that country in those days bought a round trip ticket.

Q. Do you know how long those tickets were good for?

A. Those tickets bought in the spring of the year were for six months.

Q. So that the homesteader or person could buy a round trip ticket with privilege of returning thereon within six months?

A. Yes, sir.

Q. If they bought it the first of the season. Now, when these men went to Oregon City to make their filings, if they did file in Oregon City, did you advance them money for the filing fees?

A. I did.

Q. In each instance?

A. Yes, sir.

Q. That is, did any of them pay their own, that you recall?

A. I do not recall that there was anyone paid their own.

Q. Now, as I recall, under this contract, they had the privilege, if they so desired, of paying these expenses?

A. Yes, sir.

Q. Filing fees and travelling expenses?

A. This money was to be advanced only upon their request, if they desired it.

Q. And was so advanced?

A. It was.

Q. Now, after they had made their filing, what was the ruling and practice of the Land Office, if you know, as to the length of time that they would have in which to go on the land after filing?

A. As I understood it, they were to have six months, that all homestead entrymen had six

months, what is known as constructive residence, before they had to go on the land and take up their residence, or before they even had to build a house.

Q. And did you understand that that six months would be computed and allowed as a part of their time of residence?

A. That was my understanding?

Q. Was that the general understanding?

A. That was the understanding, so far as I know, that was the understanding of everyone.

Q. So far as you know, was that in accordance with the rulings of the General Land officers?

A. As I understood them, yes.

Q. Now, between the time of their filing, the filing of these entrymen, and the expiration of the six months, what did you do further toward carrying out the contract? You were, according to this contract, Government's Exhibit 1, to have first a location fee and the homesteader agreed to employ you to build a house on the land to be taken up. Now, what did you do in regard to the construction of a house?

A. I contracted with two different sets of men to build houses on all the claims that had been filed on; and in addition, I employed at various times, three or four men, sometimes three or four men working at a time, to build trails, so that the entrymen could get to their cabins, and started in to clear the land and fit it for cultivation, that one summer.

Q. Would that be with a different set of men, the clearing than the house building?

A. Yes. The houses were contracted, that is, the construction of them.

Q. And what kind of houses did you contract for?

A. The houses were to be either log or shakes, split shake cabins, similar to the cabins or better—that is one thing I insisted upon, they were to be a little better than the cabins usually had by homesteaders throughout this country at that time.

Q. You were familiar at that time, from your examination and travels through the lands open to homestead in this state, as to the kind of cabins that were usually constructed by homesteaders?

A. I was familiar with the kind of cabins that were being constructed on timber lands which were taken, timber lands or similar lands to these lands, at that time, taken under the homestead law.

Q. These cabins were roofed, were they?

A. These cabins were to be either 12x12 or 12x14 feet. They were to have walls that were six feet high, and were to have a good roof put on them.

Q. Now, what, if anything, did you do to the cabins or cause to be done, after the contractor was through with them?

A. Well, after he had finished, I used the men who were working by the month to put in doors and windows, and in case of a log cabin, to chink it up, chink up the cracks; and wherever the cabins

were built of shakes, they were to batten it up so it would be tight. There was considerable work put on the cabins after the contractor got through.

Q. Something has been said about a bunk being constructed in some of these cabins?

A. I think there was a bunk put in each one of the cabins.

Q. Then what arrangement did you make as to each one of these nine entrymen in regard to clearing and improvement?

A. Well, I had agreed in the contract to fit the ground for cultivation, and to cultivate it.

Q. How much of it?

A. So much as would be required to comply with the homestead law, as I understood it at that time.

Q. What was your understanding of the homestead law there as to the amount of land that was required to be cultivated?

A. Well, such part of the homestead as could be cultivated, or an acre or two.

Q. Now, how did this cabin and these improvements compare with those of other homesteaders throughout the country?

A. On an average they were very very much better than ordinary improvements on lands of like character that were being taken under the homestead law at that time.

Q. And how did they compare, so far as clear-

ing and cultivation are concerned, with other homesteads in that vicinity, or in the Siletz?

A. They were superior. That is, there was more work had been done on it than was done on other cabins in the Siletz Indian Reservation.

Q. Now, you said something about cutting trails. That, so far as I recall, was not included in your contract. Did you make any extra or additional charge for cutting the trails?

A. I did not.

Q. And how much of a job in extent was that, Mr. Jones? How much trails would you have to cut?

A. To get to all these claims, there was probably 12 miles of trail cut.

Q. 12 miles of trail to each one? I didn't hear what you said.

A. There would be 12 miles of trail cut to get to all of these claims. The main trails would be cut out so that they could get horses in. I guess all the trails were cut so that horses could get into the claims.

Q. There were no wagon roads in that country; that is, not to these cabins?

A. The wagon road ended within about half a mile of the first cabin.

Q. Can you show on the plat there about where the wagon road runs?

A. The wagon road at that time ended here.

Q. You paid for these improvements, did you, Mr. Jones?

A. I did.

Q. Now, something has been testified to here, I think, about either yourself or Mr. Potter or Mr. Wells, or someone, notifying these entrymen when it would be time for them to go on their claims?

A. Well, at the end of the six months—six months after they filed, or within the date that they had to take up their residence on the land, they were notified that the cabins were ready, and that that period had arrived when they should take up their residence.

Q. And by that time, had you expended any money on these claims, and have any interest?

A. Why, yes, the cabins had been built, and the trails had been made, and the clearings had been made at that time.

Q. Now, during the time that these homesteaders were supposed to be completing their residence there, did you go over there on the Siletz Reservation?

A. I was not.

Q. Did you visit any of these claims?

A. I never did. I never visited any of these claims after.

Q. Did you have any personal knowledge of the amount of time that each homesteader was spending on his land?

A. I never did.

Q. What was your idea and belief at that time as to the amount of time that a homesteader would necessarily have to spend on his homestead in order to comply with the law in regard to residence?

A. I thought if he was there once in six months, he was complying with the law as it was then being construed.

Q. What led you to that conclusion, if you know?

A. The common practice of everyone who had homesteads.

Q. What is that?

A. The common practice of everyone who had homesteads.

Q. Were you familiar with that practice?

A. I was.

Q. Were you familiar with the statute of the United States which provides that six months' abandonment of a homestead claim—six months' absence from a homestead claim shall be deemed an abandonment?

A. Well, I don't know whether at that time I was familiar with the statute, but I was familiar that that was the understanding of everybody, that an abandonment of six months before a contest could be initiated, or before a man could lose his claim.

Q. Were you familiar to any extent with the land decisions on that point?

A. When this contract was drawn up, land decisions were called to my attention.

Q. Were you familiar with the case of Bennett v. Baxley, in Vol. II, reported in Vol. II, Decisions of the Department of the Interior, relating to public lands, on page 151, wherein Acting Secretary Joslyn to Commissioner McFarland, of date January 22, 1884, says: "I have considered the case of L. O. E. Bennett v. William A. Baxley, involving the N. E. ¼ of Sec. 32, T. 10, R. 11, Natchitoches, La., on appeal by Bennett from your decision of April 18, 1883, dismissing the contest. It appears that Baxley filed an affidavit, as required by section 2290 of the Revised Statutes, for homestead entry of the tract in question, November 20, 1880, and that May 21, 1881, Bennett initiated a contest against him for abandonment under section 2297 of the Revised Statutes, which provides that if at any time after the filing of the affidavit, and before expiration of the five years mentioned in section 291, it is proved to the satisfaction of the Register of the Land Office that the person who filed such affidavit 'has actually changed his residence or abandoned the land for more than six months at any time, the land so entered shall revert to the Government.'" Then the Secretary continues: "Under the express provisions of this section, as well as under the ordinary construction of statutes in respect to the computation of the time within which an act is to be performed, the day of the filing of Baxley's affidavit must be excluded, as if he were required to commence residence on the tract within

six months from and after such filing. The six months within which he was required to commence residence on the tract would therefore commence November 21, 1880, and expire May 21, 1881, and he had the whole of the latter day for that purpose. But the land does not revert to the Government, and there are no laches on the part of the entrymen in this respect until after his abandonment 'for more than six months.' Clearly, then, this contract, brought on May 21, was premature, and was initiated at a date when Baxley could—if he had not previously done so—commence residence on the tract and be within the statutory requirement." Do you know whether you were familiar with that decision or not, Mr. Jones?

A. I saw that decision recently, but I cannot tell whether that decision was—

Q. I will ask you whether or not you had Volume 2 of the Land Decisions?

A. I don't remember whether I had those decisions myself at that time or not. I had the decisions later on, I think. I don't think that I had them at that time. Mr. Potter got the books some place—I don't know where he got them—and read me some of those decisions; but just what decisions he read me I wouldn't be able to identify now.

Q. Now, in the case of Holz v. Fox, page 16 of the same volume, and decided by Secretary Teller to Commissioner McFarland: "Said entry was made June 15, 1881, and affidavit of contest filed March

23, 1882, alleging failure to establish a residence, change of residence for six months prior to date of affidavit, and abandonment. At the hearing it was shown that Miss Fox, who is an orphan, built her house about November 1, 1881, broke an acre and a half, dug a well, began to reside in the house November 27, 1881, and remained for two days and a night, when she went out to service (obliged to do so, it appears, in order to earn money with which to improve her homestead), returning on April 16, 1882, remaining six weeks on the land, planting a small crop, and then going out again into service. I am of opinion that, in view of all the circumstances, Miss Fox established a bona fide residence on the land. This being so decided the plaintiff has failed to prove his case; for it is clear that he showed neither abandonment nor change of residence for six months. I concur with the local officers in their opinion that the contest should have been dismissed, and therefore reverse your decision." Do you know whether you were familiar with that decision or not, Mr. Jones?

A. I cannot say that I was familiar with that very decision, but it was my understanding that abandonment of six months would work forfeiture of a man's claim.

Q. Now, in the case of Higgins v. Wells, decided in Volume 3 of the Land Decisions, page 21. I will not read all of the decision.

Mr. Haney: If your Honor please, I object to

this method of proceeding with this examination. It is exceedingly leading. Suppose the book is handed to the witness, and he is asked whether or not he is familiar with it. The object is to ascertain whether this witness was familiar with it, but the way you are doing it, you are presenting it to the court and jury and then the witness is saying either "I didn't know it" or "I don't know whether I knew it or not." I don't see why the book couldn't be passed up to him, and let him say whether he was familiar with it or not.

Court: It seems to be a material inquiry here as to what the practice of the Land Department was in administering this homestead law, and of course the practice of the Land Department would become known to those who desired to make entries of these lands; and if that continued for some length of time, it is very natural to suppose that persons would become familiar with those rulings; and once familiar with them, if they intended to make homestead entry, their procedure would be in accordance with what they understood the practice of the Land Department to be. I think it is material that these Land Department rulings and holdings shall become known to the jury in some way or other. The only question with me is whether or not it is a question of law, a fact to be promulgated along with the testimony of the witness, or to illustrate his understanding.

Mr. Hall: I was in grave doubt of that myself,

your Honor. I never like to read law books or law to a jury in the course of an argument; but I don't know of any other way of getting the matter before the court than in the manner that I am pursuing.

Court: I think I will allow you to proceed over the objection.

Mr. Haney: We save an exception.

Court: You may have your exception. I understand you to say you haven't many of those?

Mr. Hall: No, just a few. (Reads as follows):

"The validity of Wells' residence is attacked on the ground that he was a clerk of the County Court, and had his personal and legal residence at the county seat. It has been settled that official position and duty in a town or city and residence on a homestead are compatible with each other. The mere fact of such official position proves nothing, therefore. In this case the removel of his family to the land and the permanent and valuable improvements made are evidences of good faith in the claim, which is, after all, the gist of the whole matter. These are the ordinary evidences of good faith demanded, and I see no reason for requiring extraordinary evidences in this case. It is urged, however, that Wells' family only visited the land during the summer, remaining at the county seat during the winter, where he had a house and kept most of his furniture. This I think a mere refinement in argument. The homestead law is a prac-

tical law, and is so devised that it may have a practical enforcement. The law itself provides its own evidence of good faith in improvement, cultivation, and residence; if these exist as facts, the law is satisfied. If the things done on the land are sufficient to warrant good faith, we must infer good faith; and we may not go off the land and find a fact elsewhere, from which we may infer bad faith. For example, if a claimant has a hundred dollars' worth of furniture on his homestead, and two hundred dollars' worth in a house that he occupied before he took the homestead, it would be absurd to infer bad faith from the latter fact. So, if he owns a house in town, wherein he lived before entering his homestead, and which he retains and visits periodically for purposes of business or pleasure, his good faith is not thereby impeached. The extra furniture and the extra land are not forbidden by anything in either the letter or spirit of the homestead law."

Recess taken until 2 P. M.

Portland, Oregon, December 10, 1918. 2. P. M.

Willard N. Jones resumes the stand.

DIRECT EXAMINATION CONTINUED.

Q. (Mr. Hall) Now, Mr. Jones, at the time of making the final proof of any of these entrymen, were you present?

A. I was not.

Q. Either at Toledo or Oregon City?

A. Neither place.

Q. Did you in any way prior to final proof instruct or tell any of these homesteaders or their witnesses as to what they should testify to?

A. I never did.

Q. Did you ever take that question up with them at all?

A. Never discussed it with them at all.

Q. Did you ever authorize anyone else to instruct them or tell them what they should testify to?

A. I never did.

Q. Did you make any selection of the witnesses that were to testify for any of these homesteaders?

A. I did not.

Q. Did you authorize any other person to do so?

A. I did not.

Q. Now, it appears from the testimony that Mr. Wells was more or less active in going over with these homesteaders and talking with them. Was that at your instigation or request?

A. I hired Mr. Wells to secure signatures to those contracts, for which I paid him $5.00 apiece. That was as far as I authorized him to go at any time, and whatever he did after that was not done at my instigation. It was simply done because he knew the old soldiers, and probably through his kindly interest for them, as far as I know.

Q. And did you ever pay him for any other services than that?

A. I never paid him for anything except the securing of the signatures to the contracts.

Q. Did he ever make any demand or request for anything?

A. He never did.

Q. Now, what were the relations between yourself and Thaddeus S. Potter?

A. Relations of client and attorney and friendly relations besides.

Q. When did your relations with Mr. Potter first begin?

A. Our association in the office began about the year 1898.

Q. You were officing together?

A. Yes, sir.

Q. Were you partners?

A. No; just we were office partners, is all. We shared in the expenses of the office.

Q. You shared in the office expenses?

A. Yes, sir.

Q. Did Mr. Potter perform such attorney's services for you at any time as you requested?

A. He did. I often consulted him, whenever occasion required, on legal matters.

Q. Was Mr. Potter an attorney of good standing in this city?

A. He was; and I considered him a very able attorney.

Q. How did you find him as to honesty and integrity?

A. I think his honesty and integrity was of the highest order.

Q. Now, Mr. Potter also had a homestead claim, I think it has been testified to, in the Siletz country?

A. He did.

Q. He took that on his own account, did he?

A. He did.

Q. And you had no contract with him regarding that?

A. I had not.

Q. And these visits that Mr. Potter made over to the Siletz, were they made at your instance and request, or was he over there on his own affairs?

A. He was over there on his own affairs; sometimes on fishing trips. He used to go out fishing often. Sometimes he was over there on the claim.

Q. Now, when these final proofs were made, it appears from the testimony, in some instances at least, that Mr. Potter was present at the time of the making of the final proof. Just explain how that was; if that was at your request?

A. He was probably there at my request, as I wanted to see that the final proofs were made out in the regular order, and especially that the soldiers' discharge papers were put in in the proper way. That, as I understood it, was the only thing he did, was to see that the soldiers' discharge papers were properly made out and properly prepared and presented to the Land Office.

Q. Now, after those final proofs had been made and filed in the Land Office by the entrymen, did you see them?

A. I never saw those final proofs or knew what was in them until three years afterwards, when they were produced in the court.

Q. Well, did you have any reason to believe that the final proofs were not in conformity with law?

A. No. I supposed that the final proofs were in conformity to the law. Otherwise I would not have been willing to have loaned the money on them that I did.

Q. Now, you heard the testimony of the witness George West to the effect, as I recall, that you met him somewhere, either on the street or in your office, and you took the contract out of your pocket and showed it to him, and then put it back in your pocket, and he didn't sign it. Just state to the jury what the fact is.

A. Well, I have no recollection of any such occurrence, and I am positive that Mr. West signed the contract, just the same as everyone else signed it, and the same kind of a contract.

Q. If he hadn't signed the contract, would you have gone on and built his cabin and advanced the money?

A. I would not.

Q. And now, what was your talk or arrangement with Mr. West as to whether or not you were going to take over his claim?

A. When Mr. West came in to sign the mortgage, he requested that it be for seven months, as he said that he expected to pay off the mortgage and keep the land; didn't expect to sell it; that he was going to keep it. And at his request I made the mortgage seven months. And I am satisfied that, if the patent had issued, Mr. West would have been holding that land yet.

Q. Well, what was your attitude toward these old soldiers in regard to the time that the mortgage was to run? Was that a matter of agreement between you?

A. It was a matter of agreement at the time—at the time of making the mortgage.

Q. And what did you do in regard to acceding to their requests as to the fixing of the time the mortgage had to run?

A. I gave them whatever time they wanted. Whenever they made any request of any time, I gave it to them.

CROSS EXAMINATION.

Questions by Mr. Williams:

Q. Mr. Jones, when you entered into this business of locating soldiers' widows on public lands, did you make a real effort to find out what the law was governing those entries?

A. I certainly did.

Q. Did you buy a set of the Land Decisions, or get them, so that you would have access to the decisions?

A. No. I consulted Mr. Potter first as to what the law was, and he looked it up in the Land Decisions.

Q. Now, to call your attention to one decision, the decision of the Secretary of the Interior in the case of Van Ostrum v. Young, reported in Volume 6 of the Land Decisions, page 25, and also quoted approvingly in the 8th volume of Land Decisions, at page 578. That decision was in June, 1889, some ten or eleven years before you began, where the Secretary quotes approvingly this language from the previous decision: "A settler who goes upon public land with the intention of remaining just long enough to secure title by colorable compliance with the law, and then return to his former home where his family has in the meantime resided and the greater part of his personal property remained, does not establish or maintain the residence required by the homestead law." Do you remember seeing a decision to that effect?

A. I do not.

Q. I will ask you if you saw a decision in Volume 2, the same volume of Land Decisions quoted and referred to by Mr. Hall, the case of Plugert v. Empey, second volume, page 152, decided in March, 1884, wherein the Secretary, as quoted from the decision, says: "The evidence in the case, including the testimony of the defendant himself, shows that, after entering the land in October, 1880, he

had a house built in April, 1881, a cellar and well dug, several acres of timber cleared, and some vegetables planted, and that in the same month he established a residence there with his family; that in the following June he followed the line of a railroad then building in the vicinity, and kept a boarding house for the railroad employes until September, during which time his family remained on the homestead; that he then went some 20 miles away to Summit Lake, removing his family with him, where they have since remained, keeping a hotel. . . . But the entryman shows that once or twice, during each six months after removing his family, he returned to the land and remained for a night in the house; as he puts it himself, he 'went down and stayed over night in order to keep my claim good.'" Now, the Secretary says: "Is there any ground upon which this entry can be sustained. Empey alleges that he is a disabled soldier, pensioned at $6 for an injured right arm; that he could not work the land himself, and knew that he could not when he went on it; that he exhausted his money in putting up his house, and was compelled to leave temporarily for the purpose of earning a living for his family, but he furnishes no evidence in support of these allegations. . . . As an executive officer I have no discretion in such cases, unless a valid excuse for the absence is furnished. . . . The excuse is poverty—a good excuse, as it has frequently been held,

where it is an honest one; but I regret to say that I cannot allow it here. . . . He was able to pay one of his tenants for doing the work for him. . . . These facts prove that it was not poverty that induced him and his family to abandon the land." Do you remember that decision, Mr. Jones?

A. I cannot remember any particular decisions.

Q. Well, there is one more that I will ask you about, and then I won't bother you with any more. In the case of West v. Owen, decided by Mr. Secretary Lamar, on March 3, 1886, and published in the fourth volume of Land Decisions, page 412, the Secretary says: "The idea that an individual can acquire or maintain a residence on a tract of public land by making occasional visits thereto while his family are residing elsewhere and while all his interests and household effects, apparently, are with his family, has been long since exploded, if, indeed, it ever had any real existence. That is to say, in order for an individual to establish residence on a tract of public land as required under the homestead law, it is necessary that there be a combination of act and intent on his part, the act of occupying and living upon said tract, and the intention of making the same his home to the exclusion of a home elsewhere." Did you know of that ruling when you induced these old soldiers to make these entries, or permitted them to make an entry under a contract with yourself?

A. I don't think I knew anything about that decision.

Examination by Mr. Haney:

Q. Mr. Jones, I understood you to say that you terminated your connection with the City Engineer's office about 1897?

A. Yes, sir.

Q. And then you went East for a short time?

A. I was gone about 17 or 18 months.

Q. Now, it was either while you were going East or returning from the East that your attention was first directed to this question of settlement, by a railroad pamphlet?

A. No, sir; it was when I first came out here in 1889, I think, or 1890.

Q. Then you hadn't given it any serious attention, though, during the time you had been here prior to your return to the East in 1897?

A. Why, as I testified, the claim that was taken by my mother for the benefit of my brother, who was a minor, was taken in 1892. The patent was issued, I think, about 1893.

Q. But outside of that family matter, there had been no attempt made by you to carry into effect the idea that you had gotten from the railroad pamphlet until after 1897?

A. No, sir.

Q. Now, when you returned in 1897, you were handling scrip for a while?

A. When I returned in 1898, I was, yes.

Q. At that time were you officing with Potter?

A. At the time when I started to handle the scrip, I was working for the County Surveyor; had an office in the courthouse.

Q. Then, you were not officing with Potter then?

A. No, sir.

Q. It was about what time that you first discussed with Potter the question of these Siletz lands, and putting the widows of soldiers upon them?

A. Well, I should judge it was along in the fall of 1899, or the spring of 1900; but I am unable to fix the date on that exactly. I couldn't do it without looking up the records.

Q. At that time were you officing with Potter?

A. Yes, sir.

Q. He was practicing law, was he?

A. Yes, sir.

Q. And he was your legal adviser?

A. He was.

Q. Did you discuss with him the advisability of making an effort to place the widows upon the lands?

A. Well, I don't remember whether that feature of it was discussed or not.

Q. Did he know that you had in mnid, and were actually making an effort to locate some widows upon those lands?

A. He did.

Q. Then you must have discussed it with him?

A. Well, whether we discussed the feasibility of it, I don't know. The matter was discussed.

Q. Pardon me?

A. The matter was discussed, of course.

Q. Did you discuss any of the legal questions involved with Potter?

A. I did. I called his attention first to the fact that I knew of a claim that had been taken up that way, and I thought that was the law; and then I asked him to investigate and see if it was the law.

Q. Did you discuss with him the question of whether widows would have to live upon the land?

A. I did. I told him in advance they didn't have to, but I wanted to be satisfied.

Q. Did you come to the conclusion after your discussion that they didn't have to reside upon the land?

A. I did.

Q. Whom did you employ to go out and locate or find widows for you?

A. Mr. J. L. Wells.

Q. Had you known Mr. Wells prior to that time?

A. I had.

Q. Had any business association with him?

A. Some, yes.

Q. In what connection, Mr. Jones?

A. Well, he had done notary work for me. He was a notary public.

Q. But that was a very trifling matter. You had no business interests involved with him?

A. No, I think not. Perhaps he had written some insurance for me, or something of that kind.

Q. But you sought him because he was the Adjutant of the Grand Army at that time?

A. Yes, because I knew him, and I thought that he would, in his official position, be able to secure the widows.

Q. How many widows did he secure for you to go on claims?

A. I think there were 13 or 14.

Q. Did any of those widows ever get patents?

A. Well, I didn't think so until Esther Collins testified here in the case. She must have got a patent, I guess.

Q. One of them got a patent?

A. Well, I think she must have got a patent, but I haven't verified it.

Q. Did you get the land that she had?

A. I don't know.

Q. Didn't you buy it yourself?

A. I haven't any recollection of it at all.

Q. But in any event the time did come when the widows had trouble proving up, and it was discovered that that was not a feasible scheme?

A. Well, they had no trouble proving up, but

their proof, after it reached the Department at Washington, was turned down.

Q. Well, it was discovered that it was not feasible; that they could not get the land?

A. It was held by the Department that they would have to identify themselves with the land; and it was practically impossible for those widows to go over in that country and identify themselves with the land.

Q. What did you understand the Department meant when it said they had to identify themselves with the land?

A. Well, I didn't understand exactly; but I supposed it was to go over there and declare their intentions to take that as a homestead.

Q. Now, about when did you find that out? Can you remember when that was, Mr. Jones?

A. Well, that was later on. I think it was along in about 1902 before I found out positively.

Q. It couldn't have been as late as that, could it? You hadn't turned to the old soldier scheme until after you were satisfied that the widows were not going to be successful?

A. Oh, yes; the old soldiers were being located, I think, before the widows had made their final proof.

Q. Did you have any talk with Wells about securing the old soldiers?

A. Mr. Wells came to me, and said that he was having trouble in getting enough widows to take

the land over there that I wanted to locate. I knew of something like 30 or 35 claims that I could locate people on, and he had got 13 or 14, something like that; and he came in and said that he would like to take a claim himself, and he had a lot of comrades that he knew, was satisfied that they would like to take claims.

Q. You say you knew of 30 or 35 claims that you could locate people on?

A. Claims that were vacant.

Q. That was because you had had some of it cruised?

A. Yes, sir.

Q. And you knew where the good timber was?

A. I did.

Q. Did you discuss with Wells the question of whether or not he would have to live on the land?

A. No, I didn't say anything to him about it.

Q. Did he say anything to you about it?

A. He did not.

Q. Did he say anything to you about these old soldiers having families here?

A. No, I don't think that was mentioned at the time.

Q. Wasn't mentioned at all?

A. I don't think so.

Q. Didn't he tell you he understood he could go down there and live on the land—I mean, get the title to the land without living on it?

A. I don't think he mentioned that feature of it at all.

Q. Didn't discuss that with you at all?

A. It was simply to take a homestead; and he knew, and everybody knew how homesteads were being taken at that time. We didn't need to discuss it.

Q. You say everybody did? Some people—

A. Well, perhaps people—I would say people generally knew it.

Q. So you then entered into an agreement with him to pay him $5.00 apiece to bring old soldiers in who would sign up this contract with you?

A. Well, I gave him $5.00 apiece for going out and getting the contract signed.

Q. Did he generally have the contract signed and returned, or did he bring the soldier to you to sign?

A. He nearly always had it signed when he brought it in; the soldier didn't come to the office at all.

Q. So in most instances you didn't meet the old soldier at all?

A. No, sir.

Q. About how many did he get to sign up that way?

A. I think he got probably 22 or 23.

Q. And in brief that contract provided that you were to locate them, and that they were to pay you a location fee of $185; that you were to have $100

for building a house; that you were to have $175 for making the clearing and cultivation; and that you were to have $60 to cover costs of traveling and the proof?

A. Yes; that is, if they desired it.

Q. Making $520?

A. Yes, sir.

Q. And then it provided that you were to let them have $200 in addition?

A. Yes, sir.

Q. At the time they made final proof?

A. Yes, sir.

Q. That made $720. All of which, except $185, was cash advanced by you: Is that correct?

A. Well, it was—I was expecting to make a little profit on the house, and I was expecting to make a little profit on clearing the land.

Q. Did you figure out how much profit you were going to make on the house and clearing the land, or was it just a rough—

A. I couldn't figure that out.

Q. Did you know any of these old soldiers that he brought in signed up these contracts?

A. No, I didn't.

Q. You knew nothing about their financial condition?

A. No.

Q. Made no investigation of it?

A. No.

Q. Didn't know whether or not they were good for a loan of $720?

A. I was willing take the land for security.

Q. You were looking to the land for your security, weren't you?

A. Yes, sir.

Q. Did you know what kind of residence they established down there?

A. No, I didn't. I was never down there during that time.

Q. Did you know whether they lived in these cabins you caused to be built or not?

A. No, I didn't know.

Q. Didn't you know that they didn't—did not?

A. No, I didn't know that they did not, or that they did.

Q. Although you were officing with Potter all the time?

A. I was officing with Potter all the time.

Q. And Potter was accompanying them down there, and meeting them at the land office when they made their proof.

A. He wasn't—

Q. Do you want the jury to understand you did not know they were not living down there?

A. I didn't know whether they were living there or not.

Q. Well, didn't you give that matter any attention at all, Mr. Jones?

A. Why, I didn't pay very much attention to it.

There were occasional times when I would see those people here on the street.

Q. You saw Mr. Wells pretty frequently?

A. I saw Mr. Wells occasionally.

Q. You didn't think he was living down there, did you?

A. Well, he might be living down there, and I would still see him here on the street.

Q. Yes, it is possible. But I ask you what you thought about it? Did you think Wells was living down there?

A. Why, I didn't think he was living there all the time, no.

Q. You didn't think any of them were living there all the time, did you?

A. No.

Q. It was never you intention that they should live there all the time, was it?

A. I had not intention in regard to that, excepting that they should comply with the law, as they had agreed to in the contract.

Q. And you believed it was sufficient compliance if they went down there about once every six months?

A. That was my belief and every one else's—that is generally—at that time.

Q. You knew it required three years' residence under this Siletz act, didn't you?

A. Yes.

Q. And the old soldiers that you had Wells secure for you were men of what length of service?

A. Two years or more.

Q. Two years. You instructed him to get what men he could that had two years or more service in the army?

A. Yes, sir.

Q. You believed that thereby only one year's residence would be necessary in order to get title to the land?

A. Yes, sir. I believed that six months of that was constructive.

Q. Six months of it was constructive? So that it meant that they only had to have a residence there for six months?

A. Yes, sir.

Q. From your viewpoint. And you believed that that residence was sufficiently proven if they went there once during the six months?

A. Well, I had no way of knowing what their proof was going to be; nothing to do with the final proof.

Q. You employed an attorney to represent the claimants?

A. Mr. Potter was employed by me, if you mean that.

Q. Yes, Mr. Potter was employed by you to give them legal advice, and to help them in making their final proof?

A. He was there to see that the papers were

properly made out, especially their discharge papers.

Q. Did he discuss with you the question of their residence?

A. He did not.

Q. Did you examine the original filing claims of any of these claimants?

A. Filing papers?

Q. Yes.

A. No, sir.

Q. Did you examine the final proof of any of these claimants?

A. I never saw any of the final proofs on any of these claims until three years after they were made at the local office.

Q. Were you present when any of the final proofs were made?

A. I was not.

Q. Do you know whether Mr. Potter was?

A. I think that he was, practically all of them.

Q. Was he there at your request or suggestion?

A. He was there at my suggestion, for the purpose of seeing that the papers were made out in a proper way; the same as attorneys had been employed in other final proof cases.

Q. Who arranged for having the notices of final proof printed, do you know?

A. I think that the Land Office, when the application was made for final proof, it was customary for the Land Office to send out notices to whatever

paper they cared to designate nearest the land.

Q. And those notices contained the names of the claimant's witnesses, did they not?

A. I think so.

Q. Who furnished those names?

A. Well, I think that was a matter that was decided and determined by the entrymen themselves.

Q. Well, the entrymen said they didn't determine that?

A. I know some of them said they didn't; but I think that was all talked over among themselves, and that they decided on their own witnesses. That is my impression, but I don't know anything about it from my personal knowledge.

Q. Don't you know that Mr. Potter did that?

A. No, I don't know it.

Q. In any event, you did actually advance all the money necessary to build the houses and cultivate the land?

A. I did.

Q. And you did advance the money necessary to send them down there?

A. I did.

Q. And either you or Mr. Potter notified them when to go down there?

A. No, I don't think that we always notified them.

Q. Well, who was it — Wells — who notified them?

A. Well, I think they pretty generally knew.

Q. In some instances, you notified them, did you not?

A. It is possible.

Q. Well, don't you recall that you did in some instances?

A. No, I don't recall it.

Q. The expense of staying down there was paid by you?

A. Yes, sir.

Q. Did you take into consideration what length of time they would stay down there when you made arrangements for the expense?

A. I did not.

Q. Did you figure they were going to stay there a matter of three or four or five months?

A. Well, if they were, I didn't expect to pay for it.

Q. That is the point exactly. You expected to pay for their trip down there, over night, and back again, didn't you.

A. No, I expected to pay—

Q. Then, you did know they were not going to stay down there?

A. I was not expecting to pay the expenses after they got there; simply going down and back—that is what I had agreed to pay; not the expenses of their living when they were there.

Q. You paid the expense of the publication of the final proof?

A. Yes, sir.

Q. And you paid whatever expense there was at the Land Office?

A. Yes, sir.

Q. Did you discuss with any of them the question of commuting?

A. I think I discussed it with Mr. Wells.

Q. Did you advance the money for him to commute?

A. I did.

Q. And in the instances of the nine cases involved, you did get a mortgage for $720, did you not?

A. Yes, sir.

Q. Except in one instance, where the man gave you a quitclaim deed?

A. Yes.

Q. At that time, what did you figure that land was worth, Mr. Jones?

A. I thought the land was worth about eight or nine hundred dollars.

Q. About eight or nine hundred dollars. Didn't you think the land was worth more than that?

A. I don't think I thought it was worth more than that. Land was not selling in those days, but that was generally considered the value of the land at that time.

Q. Do you recall testifying in the criminal case between yourself and the Government, Mr. Jones?

Mr. Hall: If the court please, I object to that. That matter has been ruled on by the court.

Mr. Haney: I just want to refresh his memory as to this question of value, is all.

Mr. Hall: The court has ruled that the testimony in that case is not pertinent in this case.

Mr. Haney. The court has not ruled that this man's admissions, made before, are not admissible.

Court: Mr. Jones is a party here. If he has made statements contradictory to what he is stating now, the testimony is pertinent.

Mr. Haney: I think he will admit it. I just want to refresh his memory.

Q. Didn't you testify in the criminal case?

A. Yes, I testified.

Q. That you considered the claims worth one thousand dollars apiece; and on cross examination didn't Government's counsel try to make you say, or lead you to believe that you said, they were only worth eight hundred, and didn't you insist that you thought they were worth one thousand dollars apiece?

A. Well, I don't remember. I said now that they were worth eight or nine hundred dollars. Whether I testified that they were worth one thousand dollars at that time, I don't remember. Perhaps I did.

Q. If you did testify they were worth one thousand dollars, then that is what you really believed about it?

A. I certainly testified what I really believed at that time, the same as I am doing now.

Q. Yes; and this is some time after, Mr. Jones.

and the other trial was held in 1905 or 1906. If at that time you testified that you believed the claims were worth about one thousand dollars apiece, that is what you believed about it?

A. It certainly is, if that is my testimony.

Q. Now, some of these claims had contests started against them, had they not?

A. Yes, sir.

Mr. Hall: Which claims? Some of the nine claims?

Q. Yes, some of the nine?

A. I am not sure whether there were any of the nine claims had contests. I don't suppose that they were contested, or perhaps the patent would not have issued.

Q. Some of the other claims, some of the other old soldiers' claims also had contests against them, did they not?

A. Yes, sir.

Q. Now, in adjusting those contests, you paid some moneys in compromise or settlement, did you not?

A. Yes, sir.

Q. Running from what sums to what sums, Mr. Jones?

A. Well, I haven't looked it up, and I couldn't tell you from my own memory what sums I did pay.

Q. You didn't pay less than $100 on any claim, did you?

A. I don't think that I paid $100 on very many claims; but I cannot tell you.

Q. Is it your recollection that you paid less than $100 on any of the claims?

A. It seems to me that the compromise, as I remember it, was for a lump sum, and I don't know how many claims were involved in each compromise. There were three sets, as I remember.

Q. Yes, there were several different sets of two or three claims?

A. Yes. Well, no, there were more than two or three claims each.

Q. Well, there might have been more, but there were not less than that. Didn't you pay $100 a claim in compromise of contests against these claims?

A. I paid some money, but I cannot tell you how much I paid, in compromise.

Court: Mr. Haney, were any of these nine claims contested?

Mr. Hall: No.

Mr. Haney: I am not sure about that, your Honor. Just a moment. We will find out.

Mr. Hall: We object to this class of testimony, because this came in after final proof, and would not in any way tend to show any intent on the part of this defendant.

Mr. Haney: So that I may not be misunderstood, I will frankly say to the court why I desire to ask this kind of questions. I am trying to show what

seems to me is proof of Mr. Jones' view of the value of those lands. That is all I claim for it. Mr. Jones says that he was advancing $720 on each claim. I want to show that in addition to that he paid some other money on each claim. Mr. Jones is a good business man. He is not advancing $900 or $1000 on something that he doesn't think is worth more than $800. That is why I want to go into this at all.

Mr. Hall: The answer to that is, Mr. Jones had an interest in there of $720, which he was trying to protect. If he paid out money for the protection of what he had in there, that wouldn't be any testimony as to what the value of the land was. . . . He didn't agree in advance that he would put up $100 or $200 a claim for contest fees. That is an emergency that came up, and it was a question of salvage only with him at that time.

Court: I will hear the testimony. You may have your exception.

Q. You did pay at least $100 in settlement of the contests against such claims as were contested, did you not, Mr. Jones?

A. I am unable to say, Mr. Haney, that I paid as much as $100 a claim. I don't know what I did pay.

Q. Didn't you pay more than that in some instances?

A. Well, I don't think so, but then I don't know.

Q. At that time, there was no title in the claimant to the lands, was there?

A. Only such title as was evidenced by the final proof.

Q. But there was no patent issued?

A. No.

Q. You had no enforcible lien at that time, did you?

A. Well, at that time mortgages were given, of course, on final receipts. That was customary.

Q. They didn't have anything to give you a mortgage on yet, did they?

A. Yes, the final receipt was turned over, recorded, and that was the evidence of the title.

Q. And if the patent failed, your mortgage amounted to nothing?

A. That is right.

Q. So, under those circumstances, you were still willing to advance an additional $100 to the $720 you had already put in?

A. I was unwilling, but I did it.

Q. But you finally did it?

A. Yes.

Q. And you say you were not looking to the soldiers for the security? There was no individual security there?

A. No.

Q. You didn't expect to recover against the soldiers?

A. No, I never did.

Q. You were looking to the land itself?

A. Yes.

Q. To the extent of $820 a claim?

A. Do you mean on those claims that were contested?

Q. Well, on the claims where you paid a compromise of the contest?

A. You understand, of course, that I didn't have $720 in the mortgage; that there was $185 of profit there that I had made, and some other profit; so that it didn't amount really in dollars and cents to $720.

Q. But you expected to collect from each claim $820 in the cases where there had been a contest, didn't you?

A. Why, I hoped to get that much out of it.

Q. You didn't think the claims were worth less than that, did you, Mr. Jones?

A. No, I thought the claims were worth eight or nine hundred dollars, I think. That is what I think now.

Q. Had you been in the money loaning business prior to that time?

A. No, I hadn't loaned very much. I had loaned a little on claims, but not very much.

Q. Had you made a practice of loaning $700 on a claim that was worth only eight or nine hundred dollars, before that?

A. No, I hadn't made any practice of loaning any money at all.

Q. Did you keep any account of the moneys ad-

vanced by you in payment of the expenses incurred by these old soldiers?

A. I did not. I never kept any books, Mr. Haney, of any kind.

Q. Beg pardon?

A. I had never kept any books.

Q. Did you know anything about the financial responsibility of any of these old soldiers?

A. Not particularly. I knew the responsibility of some of them, but I never looked into that.

Q. With the exception of Mr. West, perhaps, and one other, you knew that they were not financially well fixed, did you not?

A. I had no definite information in regard to their financial condition.

Q. When did you dispose of the claims that you acquired out of these nine entries, Mr. Jones, do you recall?

A. I cannot recall the exact date, but I think it was in 1904.

Q. And those went to Mr. Sisler?

A. No, no. It is when the lands were sold to E. D. Wetmore.

Q. Well, they were the lands that Sisler was holding as trustee for you?

A. Yes, sir.

Q. There has been some testimony, Mr. Jones, about the headquarters cabin. Just tell the jury what that was, and where it was.

A. As I remember it, it was located in either

Section 22 or 15, about half a mile from the end of the wagon road from Toledo—the wagon road ended at that time.

Q. Whose cabin was that?

A. I cannot tell you.

Q. You didn't cause it to be built there?

A. I don't know whether I caused that cabin to be built, or whether it was built on the land.

Q. Whose land was it on?

A. I do not know whose land it was.

Q. Don't you recall whether you caused the cabin to be erected?

A. I was in there but once, Mr. Haney. Yes, I was there twice; but I cannot.

Q. What was the purpose of maintaining that cabin?

A. That was the headquarters, where the men that I hired to do work stayed. They made that their headquarters—worked out of there building the trails and clearing the land.

Q. It was also the headquarters for the old fellows who went down there on these semi-annual trips, was it not?

A. I have heard it so stated on the witness stand, but I didn't so understand it at the time.

Q. Didn't you know it was at the time?

A. No.

Q. It was fixed up more or less comfortably, so they could stay over night?

A. No, it was fixed up for a place for the men to

live that were working for me down there on those lands.

Q. Did you pay the expenses of maintaining that cabin, Mr. Jones?

A. Maintaining the cabin?

Q. Yes.

A. I don't understand what you mean.

Q. Well, was there any expense caused by maintaining it? Who furnished the food, the provisions?

A. Why, I supplied all the provisions for the men that were working down there for me.

Q. And for the old soldiers when they came down there?

A. Well, I don't know how they got their grub after they got there.

Q. You know they ate your grub while they were down there, don't you?

A. I didn't know it, but I presume they did.

Q. Do you know whether or not these old soldiers visited the land before they went to the Land Office and filed their claims?

A. I am very sure they did.

Q. Those that stated they did not, you think were mistaken?

A. I am quite sure they were mistaken. One of them shows on the papers themselves, the application papers, that he was mistaken.

Q. Now, with reference to that contract which you signed with these various old soldiers, you say Mr. Potter prepared that contract?

A. He prepared it under my direction.

Q. And he had looked up the land decisions, you said?

A. I think so, yes, sir.

Q. What was his purpose in looking up the land decisions in order to draw that contract?

A. So as to see that it would be a perfectly legal and proper contract.

Q. Well, what was the question about its legality that he was looking up?

A. As to whether or not the entrymen were entitled to make an agreement in advance to have work done for them, and to pay for it by a mortgage after final proof.

Q. Did you expect these old soldiers to pay off these advances, as you call them, Mr. Jones?

A. Why, I was hoping that they would.

Q. Where did you think they were going to get the money to pay them off?

A. I supposed they would sell the land, like most homesteaders did.

Q. And you thought they would sell for about $800 a claim?

A. Well, I supposed they would sell for whatever the land was worth—whatever they could get.

Q. Well, you thought it was worth about $800 a claim?

A. I said eight or nine.

Q. Eight or nine hundred?

A. I stated before eight or nine hundred.

Q. What was the length of time generally provided for in the mortgage that you took?

A. They were to run from four to seven months.

Q. Land was advancing pretty rapidly in price over there at that time, was it?

A. It didn't advance nearly as rapidly as I had hoped for.

Q. So in four to seven months, you expected the settler to find a purchaser who would pay him eight or nine hundred dollars for his claim?

A. No, I had no expectations in the matter.

Q. Well, you expected to get your money back, didn't you?

A. Yes, I did.

Q. And you had $720 against the claim?

A. I did.

Q. And you knew the soldier had nothing to pay it with?

A. Well, I didn't enter into that question, that feature of it.

Q. Now, Mr. Jones, didn't you enter into it? Didn't you expect him to get whatever he could out of a sale of the land?

A. I had no expectation of forcing any sale of that land.

Q. No, I didn't ask you that. Didn't you expect him to get money enough to repay your $720 by a sale of the land?

A. Well, I thought that was one way that he could do it, yes.

Q. Well, you didn't think there was any other way, did you?

A. Well, I didn't know.

Q. Had you thought of any other way?

A. No, I hadn't.

Q. And you allowed him from four to seven months to make that sale?

A. I should have allowed him as long as he needed to make the sale.

Q. But under the terms of your mortgage, it was from four to seven months?

A. Yes.

Q. And according to your belief as to values, about $900 was the most he could hope to get out of it?

A. Eight or nine hundred dollars, yes, sir.

Q. That would leave him all the way from $80 to $180 over and above your claim?

A. If he had sold it at that time.

Q. And all you expected to get out of it was to get your $185 profit and get your money back?

A. I expected to get, as I testified, some profit on building the house and clearing the land.

Q. But you hadn't figured how much that profit would be?

A. No, I hadn't figured how much that profit would be.

Q. And it was a very minor consideraton, was it not?

A. It was. I spent pretty nearly all I got out of it in making the proofs.

Q. Thad Potter was one of the claimants himself, was he not?

A. Yes.

Q. Did you ever acquire his claim?

A. No, sir.

Q. Did he get a patent to it?

A. No, sir; he relinquished it.

Q. On this question of value, Mr. Jones, was land, or timber land, in that country at that time all sold on an acreage basis, or on a stumpage basis?

A. It was bought by the claim usually.

Q. By the claim?

A. Yes.

Q. Do you recall about the amount of stumpage there was on those claims, average amount?

A. No. I would think there was about 50,000 feet of timber to the acre on it.

Court: How many?

A. About 50,000 feet per acre.

Q. You testified in the former case that you believed they would run from four to nine million feet per quarter section. That is about correct, is it not?

A. That is about correct, yes.

REDIRECT EXAMINATION.

Q. Mr. Jones, counsel has asked you in regard to money that you paid in compromise of some contests of some of these claims. I will ask you why it was that you paid that money in compromise, why you compromised those claims?

A. I thought that was the cheapest way out of it, both in time and money. If the contest had been carried on, it would have taken two years to finally get it settled in Washington, and the expenses of doing it would have been greater than the amount of money that I finally agreed to pay, although I don't remember what the amount was that I did pay.

Q. Well, you had no agreement with these settlers that you could recover that money, had you?

A. No.

Q. And in that you had your location fee, the cost of building the cabin, cost of clearing the land, and the expenses that you had then advanced?

A. Yes, sir.

Q. Now, I will ask you whether or not this money was advanced in order to protect what you already had in it?

A. That was the purpose of it.

Q. Now, counsel asked you something about the conveyance of these four claims that you got to be conveyed to Mr. Sisler. Why did you have them conveyed to Mr. Sisler?

A. Well, I had made arrangements with the bank to borrow some money there, and to put up the notes as collateral for the money borrowed; and I didn't want to merge the title and destroy the value of the collateral by taking the deeds in my own name.

Q. It wasn't done, then, for the purpose of covering up title?

A. I had no reason to cover it up.

Q. Now, in regard to the claim of Mr. Potter, I understood you to testify on your direct that you had no contract with Mr. Potter at all?

A. None whatever.

Q. He took a claim on his own responsibility, and you had nothing to do with that?

A. Nothing whatever to do with it.

Court: Do you know what claims were put in the name of Sisler?

A. Yes.

Court: Which?

A. John L. Wells' claim, the William Teghtmeier claim, Thomas Johnson claim, and the Edward C. Brigham claim; the four claims that I have testified here that I acquired.

Court: But none others?

A. None others, no, sir.

Q. Those were all the claims that you got title to?

A. Those were all the claims that I got title to.

Q. The other five claims of the nine here you never got title to?

A. No, sir.

Q. And never attempted to do so?

A. No, sir.

RECROSS EXAMINATION.

Q. Why did you say you put the title in Sisler for those claims?

A. I had made arrangements with the bank to borrow some money and put up these notes that I was getting as collateral; and I didn't want to merge the title in myself and destroy the value of the collateral.

Q. Was that the real reason, Mr. Jones?

A. That was the real reason, sir; yes, sir.

Q. Do you recall testifying about that same matter in the criminal case?

A. No, I don't remember.

Q. Is that the reason you gave there?

A. I don't know.

Q. Let me read a little of your testimony, and see if it refreshes your memory: "Q. You didn't suppose a man could take up a homestead, and have a home elsewhere than on the land, provided he visted the land once in six months? Did you think the Department had so ruled? A. Well, I don't know whether I thought that at that time or not. Q. Why didn't you care to call the attention of the people of Lincoln County to the fact that you were buying land? You say that is the reason you put it in the name of Sisler—one of the reasons. A. Because I was afraid of contests. Q. Afraid of contests? A. Yes. I had had an experience with contests."

Q. Wasn't that the reason you put the title in Sisler?

A. Well, I don't know. It might have had something to do with it.

Q. Wasn't it the reason?

A. No. it wasn't *the* reason. I was borrowing money on those notes at the time.

Q. That is the only reason you gave at the former hearing, isn't it?

A. I don't remember.

Q. (Redirect) Some of these other claims had been contested?

A. Yes.

Q. (Redirect) Were the mortgages taken in your name, to you direct?

A. Yes, sir.

Excused.

Mr. Hall: Defendant rests, your Honor.

Mr. Haney: No rebuttal.

MOTION FOR DIRECTED VERDICT.

Mr. Hall: At this time the defendant desires to move the court for an order directing the jury to return a verdict in this case in favor of the defendant.

Argument.

Upon the ground of failure to prove intent, and failure to prove that the land officers were deceived.

Court: The court will overrule this motion, and let the matter go to the jury.

Mr. Hall: We save an exception.

Exception allowed.

INSTRUCTIONS.

(Title Omitted.)

Gentlemen of the Jury:

The court will now instruct you touching the law of this case.

This is an action on the part of the United States against the defendant Willard N. Jones to recover damages for having, as is alleged, through fraud and deceit, procured the issuance by the land department of certain patents, nine in number, the patentees being Benjamin S. Hunter, Oliver I. Turner, William Teghtmeier, Richard D. Depue, Joseph Gillis, Thomas Johnson, John L. Wells, Edward C. Brigham, and Anthony Gannon. The means alleged to have been employed by the defendant to accomplish his purpose were the soliciting and procuring of persons qualified to make homestead entries of portions of public lands, being such as were ceded to the United States by the Indians on the Siletz Indian Reservation, whereby he induced the entrymen to enter into a written agreement substantially as follows:

"That whereas, the party of the first part is entitled to the benefits of the Act of Congress of June 8th, 1872, giving homesteads to honorably discharged soldiers and sailors, and desires to avail himself of the privileges therein granted by taking a homestead, and the party of the second part is in possession of information relative to the existence

of public lands within the State of Oregon subject to such entry;

Now, therefore, the party of the second part, in consideration of the covenants and agreements on the part of the party of the first part hereinafter stipulated to be kept and performed, hereby agrees to give to the party of the first part, information which will enable him to locate and file a homestead upon 160 acres of the public lands of the United States, situated within the State of Oregon, and the party of the first part hereby agrees to pay to the pary of the second part as compensation for such services and information, and for his services to be performed in the prepartaion of the papers and affidavits necessary in making such filing the sum of $185.00, to be paid in the manner and at the time hereinafter designated.

The party of the first part further agrees to comply with the laws of the United States in regard to residence upon said lands taken as a homestead, and agrees to employ and does hereby employ the party of the second part to build a house upon the land to be taken as a homestead, and agrees to pay to the said party of the second part therefor, the sum of $100.00 to be paid in the manner and at the time hereinafter designated, and also to clear and cultivate the land to be taken up under this agreement, or so much thereof as is required and for the time required by the laws of the United States in order to perfect title thereto, and to pay the said

party of the second part therefor the sum of $175.00, to be paid at the time and in the manner hereinafter designated. The said party of the second part hereby accepts such employment, and agrees to do and perform, or to cause to be done and performed, all work and labor necessary to be done and performed upon said premises in order to comply with the laws of the United States.

The party of the second part hereby agrees to advance to the party of the first part, if required, the amount of fees required at the land office in order to make and perfect such filing, and all necessary expenses of the party of the first part in connection therewith, not to exceed the sum of $60.00, and the party of the first part agrees to repay to the party of the second part all sums so advanced at the time and in the manner hereinafter designated.

The party of the second part further agrees that after final proof shall have been made upon said claims, he will, at the option of the party of the first part, procure for the party of the first part a loan not to exceed the sum of $720.00, to be secured by a first mortgage upon said claim, and immediately upon procurement of such loan all sums of money herein stipulated to be paid to the party of the second part by the party of the first part, together with all sums of money advanced by the party of the second part to the party of the first part under this agreement shall become due and

payable, and shall be paid out of the loan so secured; and it is further understood by and between the parties hereto that the payment by the party of the first part to the party of the second part of all sums of money hereinbefore designated shall be conditional upon the procurement by the party of the second part of the loan hereinbefore mentioned, if the same shall be required.

In case the party of the first part shall not wish to avail himself of the loan hereinbefore mentioned, then, and in that event, all moneys advanced to the party of the first part by the party of the second part under this agreement, together with all sums of money hereby agreed to be paid to the party of the second part by the party of the first part shall become due and payable as soon as final proof shall have been made upon said claim. And the party of the first part hereby agrees to make said final proof as soon as the laws of the United States have been complied with, (in regard to residence and cultivation)."

It is then further alleged, in effect that, having induced and persuaded the entrymen to subscribe to the agreement, the defendant thereby designed and intended to conceal his purpose to acquire title to the lands which were entered for alleged homestead purposes by said entrymen, and further that it was the intention and purpose of himself and said entrymen, through collusive agreement and understanding, to acquire the patent to said lands so

applied for and entered, without complying with the laws, rules, and regulations prescribed by Congress, and the Land Department, for procuring title from the United States, and to conceal the fact of non-compliance with such laws, rules, and regulations through fraud and deceit and false proofs, and thus to impose upon the United States, and to induce the granting of patents to said entrymen; such non-compliance, deceit, and fraud to consist in the purpose of the entrymen not to live upon the lands entered for any length of time, and thereupon to make false proofs that they had resided thereon for the length of time required by the homestead laws of Congress applicable to these particular lands; that in truth and in fact the entrymen did not establish residence upon said lands, nor did they reside thereon for any length of time, nor did they make any improvements thereon, or cultivate the same or any part thereof; nor was any such made or done except such as was made and done by the defendant himself; yet, nevertheless, the said entrymen made false and fraudulent proofs that they each established residence upon their respective claims; that each resided thereon continuously for more than one year, excepting such time as he was absent therefrom for the purpose of earning money for making improvements; that each had made improvements thereon, and had cultivated the same in substantial compliance with the law and the rules and reg-

ulations of the land department, and each that he acted in good faith in making the entry; that he had not conveyed any part of his homestead, and had not make any contract, directly or indirectly, whereby the title might inure to the benefit of any one except himself. That by reason of such false and fraudulent proofs the United States was deceived and misled, and was thereby induced to issue final certificates and patents on the following dates:

Hunter certificate, December 23, 1901; patent, September 26, 1902.

Conner certificate, November 4, 1901; patent, December 30, 1902.

Teghtmeier certificate, May 26, 1902; patent, May 19, 1903.

Depue certificate, November 25, 1901; patent, December 30, 1902.

Gillis certificate, November 4, 1901; patent, December 30, 1902.

Johnson certificate, November 4, 1901; patent, September 26, 1902.

Wells certificate, May 26, 1902; patent, October 12, 1902.

Brigham certificate, December 23, 1901; patent, June 8, 1903.

Gannon certificate, November 25, 1901; patent, June 8, 1903.

It is further alleged that the defendant paid all the fees and other expenses of the entrymen in-

curred in connection with their supposed entries, and in filing and making final proof, and generally that the defendant induced such entrymen to make the false and fraudulent proofs, and through collusion with them fraudulently induced the United States to issue the final receipts and patents aforesaid, and that shortly after the issuance of such final certificates the entrymen executed mortgages to defendant and received money from him in conformity with the agreement first entered into with them.

The defendant admits having entered into the agreement with the entrymen which is set forth in the complaint, being the one I have read to you, but denies any collusion with such entrymen for the perpetration of any fraud upon the Government, and denies that he designed or intended to deceive or overreach the United States in any way, in relation to procuring the title to lands entered by such entrymen, or that he in any way perpetrated any fraud upon the Government, in respect to such lands.

Defendant further alleges that he honestly believed, and now believes, that each entryman in good faith complied with the homstead laws with respect to settlement, residence, etc., so as to justly entitle him to his final certificate and patent, as such entrymen undertook to do by said agreement, and that in all matters and transactions, and in every matter connected with said entries,

defendant acted in good faith, and without any intention or purpose to cheat, defraud, or deceive the United States.

The Government has the burden of proof in establishing the allegations of its complaint as a condition of its recovery. By this is meant the greater weight of the evidence. In other words, it must make the better case upon the evidence adduced, without which it cannot recover.

For a clear understanding of what is required of a homesteader in order to procure title to public lands from the Government, it is necessary that I advise you touching the provisions of law governing the subject.

By Section 2290 of the United States Revised Statutes, a person applying for the entry of a homestead is required to make affidavit that his application is made for his exclusive use and benefit, and that his entry is made for the purpose of settlement and cultivation, and not either directly or indirectly for the benefit of any other person. By section 2291, which relates to the time and manner of making final proof, the homesteader is required to prove by two credible witnesses that he has resided upon and cultivated the homestead for the term of five years, and to make affidavit that no part of such land has been alienated, except as provided in a previous section which has no bearing here. By section 2297 the homestead reverts to the Government if the homesteader, after having filed

his affidavit making application to enter, has actually changed his residence, or abandoned the land for more than six months at any time. By section 3 of the Act of Congress of July 1, 1879, the entryman may secure leave of absence from the homestead for one year, by making application to the register and receiver, showing that by reason of failure of crops, sickness, or other unavoidable casualty, he has been unable to secure support for himself. And by section 2301 the entryman may commute his homestead after having resided thereon for a period of 14 months, by paying the minimum price for the quantity of land so entered.

By section 2304, every private soldier and officer who has served in the army of the United States during the rebellion for 90 days is entitled to enter upon and receive a patent for a quantity of public land not exceeding 160 acres, and he is allowed six months after filing his declaratory statement to make his entry and commence his settlement and improvement. And by section 2305 he is entitled to have the time of his service deducted from the time required otherwise in which to perfect title. But it is provided that no patent shall issue unless the soldier settler has resided upon, improved, and cultivated his homestead for a period of at least one year after he shall have commenced his improvement.

These provisions apply generally for procuring title to public lands by homestead.

By act of August 15, 1894, after the Indians on the Siletz reservation ceded some of their lands to the general Government, it was provided that the mineral lands so ceded should be disposed of under the laws applicable thereto, and the balance under the townsite and homestead law. But it was provided, however: "That each settler, under and in accordance with the provisions of said homestead laws shall, at the time of making his original entry, pay the sum of fifty cents per acre in addition to the fees now required by law, and at the time of making final proof shall pay the further sum of one dollar per acre, final proof to be made within five years from the date of entry, and three years' actual residence on the land shall be established by such evidence as is now required in homestead proofs as a prerequisite to title or patent."

This regulation was modified by act of May 17, 1900, so as to entitle the homesteader to his patent on payment of the customary fees and residence in good faith for the period required by existing law. The right of the settler to commutation was also recognized and continued in force.

Under the general statutes it has been held, and it is the law, that a homesteader is required to reside upon his entry continously for the period of five years; otherwise he would not be entitled to his patent. Old soldiers were entitled to, and were allowed, credit on their time of residence equal to the time of military service. It will be noted that,

by the act of August 15, 1894, which has relation to homestead settlers on lands acquired from the Indians on the Siletz Reservation, three years' actual residence on the land is required. There is the modification, therefore, that the actual residence required of a homesteader on these Indian lands is three years.

Earlier in the administration of the homestead laws, the requirement of the law as to continuous residence was not so rigidly enforced as it has come to be of later years, and somehow the homesteader got the idea that he was only required to be on the land once in six months. Possibly the idea had its origin in the provision that a change of residence or an abandonment of the homestead for more than six months would cause the land to revert to the Government. It was unsound as a correct interpretation of the law, but it must be admitted that the looseness with which the law was administered by the land department in this particular gave countenace to the thought, and it was, to a greater or less extent, acted upon in practice, and so continued to be until a halt was called by reason of abuses originating from such a practice.

At this time I will give you some instructions more or less general in their import.

The lands referred to in this case, the value of which the Government is seeking to recover from the defendant Jones, were formerly a part of the Siletz Indian Reservation, and they were opened

to entry under the homestead laws by the act of August, 1894. But the act of 1894 required the homestead entryman to reside on the lands for only three years, instead of five, as then required by the general homestead law. With this one exception the homestead entryman on these lands was required to fulfill all the requirements of the general homestead law.

The residence required by the law on land entered as a homestead means such residence as is maintained by one who intends to make a place his home. It does not mean an occasional visit to the land every few months or even every few weeks. Consequently, a man who, after making homestead entry, continues to reside at his former place of residence, maintaining his home there, does not comply with the homestead law.

A homestead entry is not lawful when made by one who has no intention of residing upon the land entered, but who makes the entry solely for the purpose of sale and speculation.

A homestead entry to be lawful must be made for the benefit of the entryman alone and is illegal if made under any agreement or understanding whereby any person other than the homestead entryman is to acquire any interest in the land or any part of it. You will apply this by considering whether there was any such agreement on the part of any of these entrymen of the nine claims involved in this action.

A soldier who has served in the army of the United States during the Civil War is required to maintain the same kind of residence on an original homestead entry made by him as is required of an ordinary citizen, there being only this difference that the soldier is entitled to substitute his military service for a portion of the residence required under the law but the soldier must in any event reside at least one year upon the land in order to enable him to acquire a title in accordance with the law.

The law governing the disposition of the lands on the Siletz Indian Reservation required three years of actual residence by the entrymen and while the Interior Department for a time erroneously permitted soldiers who had served in the United States Army during the Civil War to receive credit for such services in lieu of residence up to two years, the regulations of the Interior Department, and the law always required at least one year's actual residence by the soldier entrymen.

If the jury find that the nine entrymen named in the complaint, or any of them, did not intend to make their homes upon the lands entered, and that the defendant Jones knew that they did not intend to do so, and knowing that, he nevertheless aided and abetted them in making their entries and in making false final proof thereon, or otherwise assisted them in procuring their patents, the jury should in that event find a verdict for the plain-

tiff for the value of the lands patented to such entrymen.

The defendant Jones is charged in this case with having defrauded the Government of the title to nine homestead claims. Fraud may be defined as an intentional perversion of the truth for the purpose of obtaining some valuable thing from another. From the very nature of the charge made by the Government in its complaint, a verdict cannot be found against the defendant unless you are satisfied by preponderance of the evidence that by reason of his intentional perversion of the truth, and by no other means, the Government was induced to part with its title to the land in question. A person cannot be guilty of perpetrating a fraud in a case like the one now before you if he has acted in an honest, though mistaken, belief as to what the law is.

John L. Wells, B. S. Hunter and Oliver I. Connor have testified in your presence. Of the entrymen making the nine entries in question, these three are the only ones now living. Each of these entrymen has testified to having formed an opinion as to the requirements of the homestead law long prior to the time they met Jones, or made the entries in question. Each has testified to a preconceived understanding to the effect that if they visited their respective claims at periods of not to exceed six months apart, they were making compliance with the homestead law. I charge you that

if a homestead entryman honestly acts upon a mistaken understanding of the homestead law, he cannot be guilty of a fraud in the acquisition of a homestead entry. In other words, if a homestead entryman acts in the honest, though mistaken, belief that he is complying with the homestead law, he cannot be guilty of fraud in connection with his homestead for the reason that he is not guilty of a fraudulent intent.

It is contended on the part of the government that the witness J. L. Wells in all of these matters was acting as the agent of Jones, while it is contended on the part of the defendant that the authority of Wells was limited to the securing of ex-soldiers to sign the contract set out in the complaint and which is here in evidence. If you are satisfied from the testimony that Wells had no other authority from Jones than to secure the signatures to these contracts, then Wells' authority, as such agent, would be limited to that act, and no other act or thing done or performed by him in relation to these homesteads would be binding upon Jones or could be used against him.

Now, gentlemen, I will ask you to keep in mind the requirements of the law, by which homesteaders are enabled to obtain title from the Government to lands entered by them. While the lands are offered by the Government as a donation to those who would avail themselves of the benefits of the homestead laws, no one can expect to obtain title to any such

land without substantial compliance on his part with the prescribed requirements. When the homesteader has initiated his right by making his entry, the Government thereafter is bound, as by contract, to permit him to perfect his right to a patent; but he must perfect that right by a substantial compliance with the requirements of the law before he is entitled to a patent. A patent obtained in willful violation of the prescribed regulations for obtaining it is void and of no effect.

The Government, as you have observed, bases its action against the defendant on fraud, for having, through deceit and willful misrepresentation, induced the Land Department to issue final receipts and patents to the nine entrymen named in the complaint. There are three aspects of the fraud set up and relied upon for recovery:

First, that the defendant induced the entrymen to enter into the agreement set up in the complaint, and which I have read to you, with the ultimate purpose on his part, through fraud and deceit, to acquire title to the lands entered.

Second, that defendant entered into collusion with the entrymen, whereby they were not to observe the law respecting the establishment of residence and the time of residence upon the lands entered, and other requirements material to obtaining patents to such lands, but were to make false proofs so as to make it appear that they had complied

with the required regulations, and thereby to obtain patents contrary to law; and,

Third, that it was his and their intent and purpose, aside from the agreement entered into between them, to deceive and mislead the Land Departmnt by such false proofs, and thereby to induce the Land Department to issue to such entrymen the final certificates and patents to the lands entered; and that the issuance of such final certificates and patents was in fact so induced by such fraudulent methods and practices.

Another point relied upon for recovery is that the entrymen, as is alleged, had alienated the lands prior to the issuance of final certificate, and had sworn falsely in their final proofs as to that.

Before advising you further respecting the alleged fraud, I will analyze somewhat the effect of the agreement. The defendant Jones is designated as the party of the second part in the agreement, and the entryman as the party of the first part. The agreement on the part of the second party, Jones, to furnish information to the first party, or the entryman, to enable the latter to locate upon public land, for a consideration, was legitimate. No question seems to be made as to the reasonableness of the charge of $185. The agreement on the part of the entrymen to comply with the laws of the United States with respect to residence upon the lands is perfectly legitimate. It is a matter for you to determine whether it was really intended by

either of the parties that the requirements of this stipulation should be observed.

The agreement on the part of the entryman to pay Jones for building his house and for clearing and cultivating the land entered is one that the parties could properly make. There is no reason why a homesteader may not hire these things to be done instead of doing them himself, if he is able to do so. What the law requires is that the entryman shall make certain improvements. How he shall secure this to be done is not prescribed. But ability to hire the improvements made suggests the inquiry whether there existed any reason for claiming absence from the land for the purpose of earning money with which to improve. The reasonableness of the charges agreed upon for these services may also be made the subject of inquiry in connection with the question of good faith attending entering into the agreement.

So the entryman could lawfully agree with Jones that he should pay the fees at the Land Office required to be paid for perfecting the filing, and other necessary expenses connected therewith, provided there was no ulterior purpose attending such an agreement.

It has also been held, and I so instruct you, that the execution of a mortgage upon the land entered after final proof shall have been made is not an alienation of the land, and that the agreement for executing such a mortgage on the part of

the entryman did not inhibit him, under charge of swearing falsely, to say by his final proof that he had not alienated the land. You should consider, however, under all the testimony in the case, for what real purpose this clause was agreed to and entered in the contract, whether it was bona fide for the purpose of assisting the entryman in legitimately acquiring the patent from the Government, or whether it was designed to cover a purpose by which Jones was himself ultimately to acquire the title from the entryman. If this latter was the design and purpose of the parties, then the agreement was tantamount to an alienation, and the entryman could not have truthfully sworn that he had not alienated the land before making final proof.

Now, keeping this analysis of the agreement also in mind, you will further consider whether the agreement itself contains all that it was designed and intended by the parties to accomplish. It is the theory of the Government that it does not; that it was not intended that the entrymen should live upon the land the requisite length of time prescribed by law; that it was their purpose to evade the law relative to homesteads in other respects, and that it was their purpose and design that false proofs should be made in pursuance of a plan or scheme to acquire the final certificates and patents in contravention of the requirements of the law. So you will consider what the real understanding and purpose of the contracting parties were,

whether they were as voiced by the agreement alone, or whether they were other than appear to be expressed by such agreement, as claimed by the Government.

Evidence has been adduced on the part of the Government with the purpose of showing that the defendant induced the entrymen to enter into this contract. It will be your purpose in the course of your inquiry to determine whether this is true, and if true what bearing it has upon the ultimate question of the alleged fraud and deceit by which it is also alleged that the Land Department was misled and influenced into parting with the title to the land.

The Government claims, and the defendant admits, that Wells was defendant's agent for procuring the assent of soldiers to the agreement, but defendant denies that Wells' authority extended beyond this, or that he was constituted his agent for any other purpose. Of course, Jones could not be bound by the acts of Wells done beyond the scope of his authority. It is a rule of agency that what one does through another he does by himself. So the defendant is bound by what Wells did in inducing these entrymen to enter into the agreement; but he would not be bound by what Wells did, if anything, beyond that, unless you find that Wells' agency, by authority of the defendant, had a broader scope for agreeing with the entrymen to do things in derogation of law in acquiring patents to homesteads.

Then you will determine whether the defendant entered into a collusive, fraudulent undertaking and agreement with these entrymen, whereby they were to obtain final certificates and patents to the lands entered through intended failure on the part of the entrymen to comply with the provisions of the law relative to the acquirement of homesteads, and then through false proofs showing compliance. If the defendant had such an agreement with these entrymen, and of this you are to be the judges, then he would be responsible for their acts, and if they are wilfully delinquent and have been guilty of a fraud upon the law and the Government, then the defendant would be alike responsible.

And then finally you will determine what was the true intent and purpose of the defendant and these entrymen in entering into this agreement, whether it was, as I have previously indicated to you, as voiced by the terms of the agreement itself, or whether it was in pursuance of a plan or scheme reaching beyond the agreement, to acquire the lands fraudulently and in willful non-observance of the provisions of the homestead laws and false proofs respecting what was really done. If there existed such a plan or scheme, as the plaintiff insists was the fact, and the defendant was a party to it, and the final certificates were obtained through fraud and deception in the particulars alleged, the defendant would be liable. The defendant says he was not a party to such a plan or scheme, and is

without knowledge of what the entrymen did with regard to settlement, the time of living upon the land, and the alleged final proofs. If this is so, then he would not be liable. All these things you must determine from a careful consideration of all the testimony in the case.

There are some other matters vital for inquiry that I now call to your attention.

It is a fact disclosed by the record that the Land Department approved the final proofs of these entrymen and issued the final receipts, when it was shown by such final proofs that the entrymen had lived but a little over a year on the lands entered. The proofs therefore showed, and of that fact the Land Department had ample notice and knowledge, that the entrymen had not complied with the law by establishing three years' actual residence on the land. Yet nevertheless the department approved the proofs and issued the final certificates, and subsequently the patents. This can be accounted for in no other way than that the Land Department interpreted the law by reading into the act granting homesteads on the Siletz Reservation the provisions of the general homestead law relating to soldiers having performed military service, and giving credit to these entrymen against their required residence upon the lands entered for the time of such service.

The Land Department has since placed a different interpretation upon this act, and it now requires full three years' actual residence, whether

the applicant be an old soldier or not. But the Land Department having rendered this interpretation of the act as it respects these entries, and thus led the entrymen to believe that they were complying with its provisions by one year's residence and were entitled to credit for the time of their military service, the Government is bound by it so far as it concerns this case, and your inquiry will be whether these entrymen complied with the law as thus interpreted, that is, by a one year's residence at least, with credit for the time of military service. These entrymen were not responsible for such an error in interpretation, if error, on the part of the Land Department, and if they conscientiously believed that, by a one year's residence with proof of two years' military service, they had complied with the exaction of the law, then they could not be charged with making false final proofs, if it be a fact, which is for you to determine, that they actually resided on the lands entered for the period of one year or more. If, however, they wilfully failed to live upon the lands for any length of time, or for a materially less length of time than one year, and then deliberately swore falsely as to that in their final proofs, and this was all done with the knowledge and assent of the defendant, through an understanding with them that they should pursue such a course in order to obtain the patents from the Government, the defendant would nevertheless be liable in the present action.

The plaintiff cannot recover in this action for mere noncompliance with the homestead law on the part of the entrymen, and a mistaken issuance of the final receipts and patents on the part of the Land Department; but it must recover, if at all, upon the alleged fraud and deceit practiced and the inducement thereby of the Land Department to issue the certificates and patents.

It is a fact that the defendant acquired title to but four of these nine claims; but if he induced these entries by collusion and understanding with the entrymen that they should make false proofs for deceiving the Land Department, and the Land Department was accordingly deceived thereby and misled into issuing the final receipts and patents —and this is a matter, as I have previously informed you, for your determination—then the defendant would be liable to the extent of the nine claims, notwithstanding he did not finally acquire title to five of them. But if the testimony does not implicate him with the alleged fraud in procuring the issuance of patents to any of such claims, he would not be liable at all, or for any of such claims; and so he can only be held liable for complicity with the entrymen, if any of them are chargeable with willful fraud, as to such claims only to which the patents were procured by them through fraud and deceit.

Some, if not all, of the entrymen seem to have been imbued with the belief and understanding

that they, having engaged in the military service of the United States, were not required to make settlement except within six months after locating their homesteads and filing their declaratory statements, and that as to residence the law was satisfied if they were actually upon the land once in every six months during the time that they were required to live thereon in order to complete their right to patent. It is not clear how they came by this idea, whether by inquiry as to the requirements of the law or by general repute among settlers or would-be settlers, or from the manner in which the Land Department was at that time administering the law as it pertained to soldiers' homesteads. But however they came by it, if you find that they really had such belief and understanding, if they acted in entire good faith, honestly believing that what they did was a compliance with the law, they cannot be held to the perpetration of a wilful falsehood in making their final proofs whereby they simply set forth their honest belief and understanding. No one can be accused of swearing falsely unless he understood and believed that what he was swearing to as a fact was untrue and false, and unless there was a corrupt motive attending his oath, whereby he wilfully intended to deceive; and so these entrymen cannot be held to have sworn falsely, however much they may have been mistaken, providing they were acting in good faith, honestly believing that what they swore to was the

truth. Much less could they be held to the perpetration of wilful falsehood if they were misled by the manner in which the Land Department had been administering the homestead law respecting soldiers' homesteads.

You should apply the same rule to the defendant himself. If he acted honestly and in perfect good faith in what he did, though erroneously, and not corruptly with a purpose of overreaching the Land Department through fraud and deceit, he cannot be held accountable under the complaint. The real attitude of these entrymen and the defendant in the respects discussd is a matter for your determination, under all the evidence, in the course of your inquiry touching whether or not the defendant is liable to respond in damages under the allegations of the complaint.

It is essential that the Land Department should have been misled and deceived by what was done by the entrymen, and acted accordingly in issuing the final certificates and patents. The written proofs are in evidence, and you will consult them, and with the light you have gained through the evidence in this case, you will be able to determine pretty definitely whether the proofs made were calculated to deceive and mislead the officers of the Land Department, whose duty it was to pass upon them; that is, whether they apparently stated the truth or not. If the proofs obscure the truth, it is safe to conclude that they were misleading;

but if what is stated by such proofs indicates that the entrymen did not comply with the Land Department's interpretation of the law with respect to the time of residence required to be made upon the lands, and if want of sufficient residence is patent, then the Land Department could not have been deceived.

I repeat it is not a question here as to whether the Land Department issued these final certificates and patents through an erroneous construction of the law, but whether it was misled as to the facts through deceit and fraud practiced upon it, and was thereby induced to issue these documentary evidences of title.

I will call your attention to the Wells claim. This he commuted. Fourteen months' residence was required of him under the law, and this is the only matter of distinction from the other claims.

I have admitted testimony relative to the location of soldiers' widows on lands on the Siletz Reservation by the defendant, and the location of soldier settlers other than those who acquired final certificates and patents to the nine claims involved in this action, not for the purpose of showing liability on the part of the defendant on account of such locations and what was done with respect thereto, but as tending to show with what intent and purpose the defendant acted with reference to the nine claims here involved, and you will consider such testimony for no other purpose than this.

I will now instruct you touching the measure of damages in the event that you find for the plaintiff.

If under the testimony you are convinced that the plaintiff in this action is entitled to recover, I instruct you that the measure of damages which plaintiff will be entitled to recover from defendant would be the market value of such of these nine claims as you may find that the Government is entitled to recover at the time of the issuance of the final certificates by the land officers of the United States., That is, such price as the lands would at that time have brought in open market, offered by a seller who was not obliged to sell to a buyer who was not obliged to buy, with legal interest at the rate of six per cent per annum from that date to this. And in arriving at this conclusion you may take into consideration the location of the lands, their quality, and their accessibility to roads, railways, or other means of transportation, and from all the legitimate facts before you determine what the reasonable value of these lands was at the time that the Government parted with its title. You will bear in mind the testimony adduced on this subject.

Now, gentlemen of the jury, you are the judges of the effect of the testimony. But you are to exercise that function imposed upon you in accordance with the rules of evidence. For instance, you are not bound to be controlled by the number of witnesses that may testify to a given fact, but by

the conviction which the testimony brings to your mind. A witness is presumed to speak the truth, but this presumption may be overcome by the manner in which he testifies, by the character of his testimony, and by testimony which goes to affect his motives or his character, and by contradictory evidence. A person found to be false in one particular is to be distrusted in all. And furthermore you may take into consideration as you go along the interest that the witness may have in the case or any interest which he may have which would seem to have a bearing upon or to influence his testimony and his motives, and the relation of the witnesses to the cause, or the motive that they may have in inducing final results. And in this way you will determine the credibility of the witnesses themselves.

I may say furthermore that you may take account of the witness while on the witness stand, and observe whether or not he seems to be candid and open and desires you to have the truth, or whether or not he appears to be reserving something that he thinks will be injurious in some way. And in this way, after determining the credibility of the witnesses, you will be able to determine from all the evidence in the case what your verdict shall be in the end.

What the court may have said at any time during this long trial from which you might infer that the court has an opinion as to the fact, you will

disregard. But I will say to you further that you must take the instruction of the court as to the law and apply it implicitly in your investigation as to the fact in the case. And upon all this you will formulate your judgment as to your verdict.

Court: Are there any exceptions, gentlemen?

Mr. Hall: If the court please, the defendant desires to except to the refusal of the court to give the instructions requested by the defendant which were not given.

Also to the modification made by the court of instruction No. 7.

Court: Very well; you may have your exceptions to those.

Mr. Williams: If your Honor please, the plaintiff would except to the refusal of the court to give our requested instructions which were not given, and the addition imposed to our request No. 4.

As to the general charge of the court, we except to that portion thereof relative to the agency of the witness Wells, the first reference. To the last reference we make no exception.

Also to the charge to the effect that the execution of a mortgage was no violation of the homestead law, no alienation.

To that portion of the charge to the effect that if the defendant mistakenly believed that the entrymen had a right to acquire title in the manner specified, he would not be liable. Also as to the mistaken belief of the entrymen themselves that they could

acquire title in this manner, it would not be a fraud upon the Government.

Mr. Haney: If the court please, there is one exception; that is where you instructed the jury that if the entrymen honestly, though mistakenly, believed, in making their final proofs, that such proof was sufficient.

Court: Very well. All these exceptions will be allowed.

BOND IN ERROR

In the United States Circuit Court of Appeals for the Ninth Circuit.

WILLARD N. JONES

Plaintiff in Error

vs.

UNITED STATES OF AMERICA

Defendant in Error.

WHEREAS, the plaintiff in error in the above entitled action has applied for a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, from a judgment made and entered against him in the District Court of the United States for the District of Oregon, in favor of the United States, defendant in error, in the said District Court, and against Willard N. Jones, the plaintiff in error, on the 12th day of December, A. D., 1918, in the sum of $18,204.84, and $610.79 costs and disbursements taxed therein, in favor of defendant in error;

Now, Therefore, in consideration of the premises and of the allowance of said writ of error, we, the undersigned, Willard N. Jones, as principal, and Fielder A. Jones and B. Gildner, as sureties, all of the City of Portland, State of Oregon and County of Multnomah, do hereby jointly and severally undertake and promise, for and on behalf of the plaintiff in error, that the said plaintiff in error will duly prosecute his said writ of appeal to effect, and if he fail to make his plea good, shall answer all damages and costs to the United States of America, defendant in error, which may be awarded against plaintiff in error by the Appellate Court.

In Witness Whereof, we have hereunto set our hands and seals, this 24th day of March, A. D., 1919.

Willard N. Jones,
Principal.
Fielder A. Jones,
B. Gildner,
Sureties.

District of Oregon, ss.

I, Fielder A. Jones, and I. B. Gildner, of the City of Portland, County of Multnomah and State of Oregon, whose names are subscribed as sureties to the within bond, being severally duly sworn, each for himself says:

That I am a resident and freeholder within the State of Oregon; that I am not a counsellor or at-

torney at law, sheriff, clerk, or other officer of any court, and am worth the sum of two thousand ($2,000) dollars over and above all my debts and liabilities exclusive of property exempt from execution.

FIELDER A. JONES,
B. GILDNER.

Subscribed and sworn to before me, this 24th day of March, 1919.

JOHN H. HALL,
Notary Public for Oregon.

My commission expires August 28, 1919.

STIPULATION.

In the District Court of the United States for the District of Oregon.

WILLARD N. JONES
Plaintiff in Error

vs.

UNITED STATES OF AMERICA
Defendant in Error.

IT IS HEREBY STIPULATED AND AGREED by and between plaintiff in error and defendant in error, acting through their respective counsel, that Government's Exhibits numbered 1 to 32, inclusive, introduced upon the trial of the above entitled cause, shall be transmitted by the Clerk of the above entitled court to the Clerk of the Circuit Court of Appeals for the Ninth Circuit, to be used by either party hereto in presenting said case to

said court, or to the Supreme Court of the United States if said case should be carried to said court.

Dated at Portland, Oregon, this 27th day of March, 1919.

JOHN H. HALL and
JAY BOWERMAN,
Attorneys for Plaintiff in Error.
B. GOLDSTEIN,
Assistant U. S. Attorney for the District of Oregon, Attorney for Defendant in Error.

SUPERSEDEAS BOND ON WRIT OF ERROR.

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA
Plaintiff

vs.

WILLARD N. JONES,
Defendant.

WHEREAS, the defendant in the above entitled action has sued out a writ of error to the Circuit Court of Appeals for the Ninth Judicial District, from a judgment made and entered against him in the said District Court of the United States for the District of Oregon, in favor of the United States of America in said action and against defendant Willard N. Jones, on the 12th day of December, 1918, for the sum of $18,204.84 damages, and $610.79 costs and disbursements of plaintiff therein;

NOW, THEREFORE, in consideration of the premises, we, the undersigned, Willard N. Jones, of the

County of Multnomah and State of Oregon, as principal, and J. H. Cook and Fielder A. Jones, residents of the County of Multnomah and State of Oregon, as sureties, do hereby jointly and severally undertake on the part of the said Willard N. Jones, that he will prosecute said writ of error to effect, and answer all damages and costs if he fail to make his plea good, and that he will pay to the United States of America the amount of said judgment, and all interest, costs and disbursements, including just damages for delay and costs and interest on the appeal, which may be awarded against him by the Court of Appeals or the Supreme Court of the United States, and that he will fully pay and satisfy any judgment entered against him if the said cause should be affirmed by the courts above named, and will satisfy said, or any, judgment obtained against him so far as affirmed.

IN WITNESS WHEREOF, we have hereunto set our hands and affixed our seals, this 17th day of April, A. D., 1919.

(Seal) WILLARD N. JONES,
Principal.

(Seal) J. H. COOK,

(Seal) FIELDER A. JONES,
Sureties.

District of Oregon, ss.

I, J. H. Cook, and I, Fielder A. Jones, whose names are subscribed as sureties to the within undertaking, being severally duly sworn, each for himself says:

That I am a resident and freeholder within the State of Oregon; that I am not a counsellor or attorney at law, sheriff, clerk or other officer of any court; and that I am worth the sum of twenty thousand ($20,000) dollars over and above all my debts and liabilities, exclusive of property exempt from execution.

J. H. Cook,
Fielder A. Jones.

Subscribed and sworn to before me this 17th day of April, A. D., 1919.

(Seal) J. H. Hobart,
Notary Public for Oregon.

My commission expires December 13, 1920.

The foregoing undertaking and bond is hereby approved this 21st day of April, A. D., 1919.

Chas. E. Wolverton,
Judge.

ORDER STAYING EXECUTION.

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA
Plaintiff

vs.

WILLARD N. JONES,
Defendant.

The defendant in the above entitled action having filed with the clerk of this court a good and sufficient supersedeas bond on a writ of error to the Circuit Court of Appeals for the Ninth Circuit;

IT IS HEREBY ORDERED AND DIRECTED, that execution against said defendant be stayed until after the final determination of said cause by the Appellate Court.

Dated this 21st day of April, 1919.

CHAS. E. WOLVERTON,
Judge.

ORDER EXTENDING TIME FOR FILING TRANSCRIPT AND RECORD IN COURT OF APPEALS.

In the District Court of the United States for the District of Oregon.

WILLARD N. JONES,
Plaintiff in Error

vs.

UNITED STATES OF AMERICA
Defendant in Error

Now, at this time, on petition of John H. Hall, of counsel for plaintiff in error,

IT IS ORDERED AND DIRECTED, that the time for plaintiff in error to file the transcript and record of the above entitled cause, with the Clerk of the Court of Appeals for the Ninth Circuit, at San Francisco, California, be, and the same is hereby, extended until the 10th day of May, 1919.

Dated this 17th day of April, 1919.

CHAS. E. WOLVERTON,
Judge.

STIPULATION AS TO COPY OF TRANSCRIPT OF RECORD.

In the District Court of the United States for the District of Oregon.

WILLARD N. JONES,

Plaintiff in Error

vs.

UNITED STATES OF AMERICA

Defendant in Error

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto, that the foregoing printed transcript of record is a true, correct and complete transcript of the record in the District Court of the United States for the District of Oregon, wherein the United States of America was plaintiff and is defendant in error, and Willard N. Jones was defendant and is plaintiff in error, upon return of the writ of error in the United States Circuit Court of Appeals for the Ninth Circuit, and the said transcript of record may be certified as such by the Clerk of the District Court of the United States for the District of Oregon, at any time, without further notice to either of the parties hereto, and without comparing the same with the original, of which it purports to be a copy.

JOHN H. HALL,
JAY BOWERMAN,
Attorneys for Plaintiff in Error.
BARNETT E. GOLDSTEIN,
Assistant U. S. Attorney, of Attorneys for Defendant in Error.

United States of America,
District of Oregon, ss.

The attorneys of the respective parties to the within proceeding having stipulated that the foregoing printed transcript of record as prepared by the plaintiff in error and tendered to me for certification is a true and correct transcript of the record and proceedings in the case of United States of America, plaintiff and defendant in error, and Willard N. Jones, defendant and plaintiff in error, and that I shall certify the said printed transcript without comparing the same with the original record;

Now, Therefore, in accordance with the said stipulation, and without comparing the said transcript with the original record, I do hereby certify that the foregoing printed transcript of record upon writ of error in the case in which Willard N. Jones is plaintiff in error and the United States of America is defendant in error, is a full, true and complete transcript of the record of proceedings had in said court and said cause, as the same appears of record and on file in my office and in my custody.

In Testimony Whereof, I have hereunto affixed my hand and the seal of said court at Portland, in said District, this —— day of ————, 1919.

G. H. Marsh,
Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3342.

WILLARD N. JONES, Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA, Defendant in Error.

Upon Writ of Error to the District Court of the United States for the District of Oregon.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated term, to wit, the September term, A. D. 1919, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the court-room, in the city of Portland, in the State of Oregon, on Thursday, the eighteenth day of September, in the year of our Lord one thousand nine hundred and nineteen.

Present:

The Honorable William B. Gilbert, Senior Circuit Judge, Presiding.
The Honorable William W. Morrow, Circuit Judge.
The Honorable William H. Hunt, Circuit Judge.

No. 3342.

WILLARD N. JONES, Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA, Defendant in Error.

Order of Submission.

Ordered above entitled cause argued by Mr. John H. Hall, counsel for the plaintiff in error, and by Messrs. Bert E. Haney, United States Attorney, and Barnett H. Goldstein, Assistant United States Attorney, and counsel for the defendant in error, and submitted to the Court for consideration and decision.

At a stated term, to wit, the October term, A. D. 1919, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court-room thereof, in the city and county of San Francisco, in the State of California, on Monday, the tenth day of May, in the year of our Lord one thousand nine hundred and twenty.

Present:

The Honorable William B. Gilbert, Senior Circuit Judge, Presiding.
The Honorable Erskine M. Ross, Circuit Judge.
The Honorable William H. Hunt, Circuit Judge.

No. 3342.

WILLARD N. JONES, Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA, Defendant in Error.

Order Directing Filing of Opinion and Filing and Recording of Judgment.

By direction of the Honorable William B. Gilbert, William W. Morrow, and William H. Hunt, Circuit Judges, before whom the cause was heard, ordered that the typewritten opinion this day rendered by this Court in the above-entitled cause be forthwith filed by the Clerk, and that a Judgment be filed and recorded in the Minutes of this Court in accordance with said opinion.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3342.

WILLARD N. JONES, Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA, Defendant in Error.

In Error to the District Court of the United States for the District of Oregon.

John H. Hall, and Jay Bowerman, Attorneys for Plaintiff in Error.
Bert E. Haney, U. S. Attorney for Oregon, Barnett H. Goldstein, Assistant U. S. Attorney, Attorneys for Defendant in Error.

Action at law by the United States to recover of the defendant, Willard N. Jones, damages for the value of certain public lands which it is charged he, through misrepresentation and fraud, induced the Land Department of the Government to part with its title to and issue patents therefor to certain persons claiming to be bona fide entrymen, but who were not such entrymen and not entitled to receive such patents or the title to said lands.

Before Gilbert, Morrow, and Hunt, Circuit Judges.

MORROW, *Circuit Judge:*

This case is here for the second time.

The statement of facts contained in the former opinion of this court sufficiently describes the pleadings (U. S. v. Jones 242 Fed., 609). The former writ of error brought up the question whether the Court below was correct in entering a judgment on the pleadings in favor of the defendant. The question there involved was stated by Judge Hunt, speaking for this Court, as follows:

"The entries described in the complaint were made under an Act of Congress (28 St. 286, 326) and the amendments thereto (31 St. 179, 740) requiring, among other things, that three years' actual residence on the land 'shall be established by such evidence as is now required in homestead proofs as a prerequisite to title or patent.' But the Land Department of the United States, acting under what is now conceded to have been a mistake of law, permitted eight of the entrymen to make proof of residence of from one to one and one-half years, respectively, and to deduct times of their respective military services from the required three-year period of residence. This error arose by applying to the entries upon lands within the Siletz reservation the provisions of Sections 2304 and 2305, Revised Statutes (Comp. St. 1916 Secs. 4592, 4593), and the Act of January 26, 1901, c. 180 (31 St. 740) which relate to commutation of entries made by honorably discharged Union soldiers."

The Court then stated the question at issue in the case as follows:

"Inasmuch, then, as the requirements of the statute under which the proofs were taken and the patents issued could only have been properly met by proof of three years' actual residence on the land, the question arises: Is the United States precluded in this action from recovering damages although the entrymen in their final proofs did not say that they had actually resided on their lands for the required period of three years, yet did falsely swear that they had actually resided on the lands for certain times, though for less than the three years required; that they were making entries for themselves when in fact they were making them for the benefit of the defendant, Jones; that they had made certain improvements which in fact they had not made; and that they had made their entries for the purpose of actual settlement and cultivation, when in fact they had not made them for those purposes?"

The Court held that the United States was not precluded from recovering damages in this action for the lands conveyed in the patents to the entrymen therein named, notwithstanding the entrymen in their final proofs did not say that they had actually resided on their lands for the required period of three years. The Court accordingly reversed the judgment of the trial court and upon the

subsequent trial of the issues before a jury a verdict and judgment was entered in favor of the United States for the sum of $18,204.84.

The question involved in the former writ of error is again brought up for review upon an objection to the introduction of any evidence in support of the allegations of the complaint. The objection to such evidence is made upon the ground that the officers of the Land Department could not have been deceived to the extent that any of the homestead claim-s had sufficiently complied with the laws of the United States to entitle them to final certificates and patents and that the false representations and testimony given by them upon their final proofs even if strictly true would not entitle them to patents. To this objection we must reply as before, that "this contention would eliminate intentional misrepresentation and falsehood as to agreements of alienation and as to continuous residence for the time sworn to in the final proof and as to cultivation of the lands embraced within the entries and occupancy thereof for home purposes"; that "these several requirements cannot be looked upon as immaterial and irrelevant, because they are of the essence of the homestead law." U. S. v. Jones, 242 Fed. 614.

It is next contended that the Court should have granted defendant's motion for a non-suit and for a directed verdict in favor of the defendant for the reason that the testimony was insufficient to sustain the charge of misrepresentation and fraud on the part of the defendant Jones with respect to the entries and proof described in the complaint. It is admitted that the defendant entered into a written agreement with the nine prospective entrymen mentioned in the complaint with respect to these lands. This agreement provided in substance, among other things, that Jones could give to each of the entrymen information which would enable the latter to locate and file a homestead upon one hundred and sixty acres of the public lands of the United States situated within the State of Oregon; that the entryman was to pay Jones a compensation for such services and information and for his services to be performed in the preparation of the papers and affidavits necessary in making such filing, the sum of $185.00; that the entryman shoulde employ Jones to build a house upon the land to be taken as a homestead and to pay Jones therefor the sum of $100.00; that Jones would clear and cultivate the land to be taken up under the agreement or so much thereof as was required and for the time required by the laws of the United States in order to procure title thereto; that the entryman would pay therefor the sum of $175.00; that Jones would accept such employment and agree to do and perform or cause to be performed, all the work and la' or necessary to be done and performed upon said premises in order to comply with the laws of the United States; that Jones would advance to the entryman if required the amount of fees required at the land office in order to make and perfect such filing and all necessary expenses of the entryman in connection therewith, not to exceed the sum of $60.00; that the entryman agreed to repay to Jones all sums advanced by him; that Jones, after final proof had been made upon the claim would at the option of the entryman procure for the en-

tryman a loan not to exceed the sum of $720.00 to be secured by a first mortgage upon the claim and immediately upon the procurement of such loan all sums of money still to be paid to Jones by the entryman together with all sums of money advanced by Jones to the entryman under the agreement should become due and payable and should be paid out of the loan so secured. It was further provided that if the entryman did not avail himself of the loan mentioned, then all moneys advanced to the entryman by Jones under the agreement, together with all sums of money agreed to be paid to Jones by the entryman should become due and payable as soon as final proof should have been made upon the claim.

The lands in controversy, the value of which the United States is seeking to recover from the defendant Jones, were formerly a part of the Siletz Indian Reservation in Lincoln County in the State of Oregon. They were ceded to the United States by the Indians under an agreement dated October 31, 1892. They were opened to settlement and entry on July 25, 1895, under the homestead laws of the United States by Section 15 of the Act of August 15, 1894 (Indian Appropriation Bill) (28 Stat. 286, 323, 326) and the Proclamation of the President of the United States dated May 16, 1895 (29 Stat. 896). The Act of August 15, 1894 provided, among other things, that "The mineral lands shall be disposed of under the laws applicable thereto, and the balance of the land so ceded shall be disposed of until further provided by law under the townsite law and under the provisions of the homestead law: Provided, however, that each settler, under and in accordance with the provisions of said homestead laws shall at the time of making his original entry, pay the sum of 50 cents per acre in addition to the fees now required by law, and at the time of making final proof shall pay the further sum of $1.00 per acre, final proof to be made within five years from the date of entry, and three years' actual residence on the land shall be established by evidence as is now required in homestead proof, as a prerequisite to title or patent." The law relating to homestead proof here referred to is found in Sections 2290 and 2291 of the Revised Statutes of the United States. In Section 2290 it is provided that any person applying to enter land as a homestead shall make affidavit "that such application is honestly and in good faith made for the purpose of actual settlement and cultivation and not for the benefit of any other person, * * * that he * * * does not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for himself * * * and that he * * * has not directly or indirectly made, and will not make, any agreement or contract in any way or manner, with any person * * * whatsoever by which the title which he * * * might acquire from the Government of the United States should inure, in whole or in part to the benefit of any person except himself" and in Section 2291 it is provided that in making final proof by the entryman he shall prove by "two credible witnesses that he * * * has resided upon or cultivated the" homestead "for the term of five years immediately succeeding the time of filing the affidavit and that no part of such land has

been alienated" except as provided in a preceding section not applicable here.

The Act of August 15, 1894, required the homestead entryman to reside on the land for only three years instead of five years as then required by the general homestead law. With this single exception the homestead entryman was required to comply with all the provisions of the general homestead law.

Under this law the question upon the trial was: did the entrymen in their application to enter the land or upon final proof make false representations in any of the particulars mentioned with intent to deceive and defraud the United States out of the title to such lands and if such false representations were made, were they made with the knowledge and solicitation of the defendant Jones? The first inquiry is: did the defendant Jones make an agreement or contract with the entrymen or either of them mentioned in the complaint in any way or manner whereby the title the entrymen might acquire from the government of the United States would inure in whole or in part to the benefit of the defendant Jones? A written agreement was made by the defendant Jones with each of the entrymen relating to this land. The agreements provided that Jones would give the entrymen information which would enable each of them to locate and file a homestead upon one hundred and sixty acres of public lands. It does not appear from the evidence that these prospective entrymen were looking for homesteads or indeed for land of any kind. On the contrary Jones had employed an agent to look up the lands for him and another agent was sent out to look up qualified entrymen to enter the lands. The agreement was to bind the entrymen to Jones in such a manner that, while it appeared upon its face to aid the entryman in acquiring a homestead for himself under the law, it was in fact an agreement in which that feature of the transaction might have a different complexion and be made subordinate to the interest of Jones in a profitable transaction for himself in land or money or possibly both. The agreement provided that after final proof had been made by the entrymen, Jones, at the option of the entryman, would procure a loan, not to exceed the sum of $720.00 to be secured by a first mortgage upon the claims, and immediately upon the procurement of such a loan, all sums of money advanced by Jones should become due and payable and should be paid out of the loan so secured.

These advances to be made by Jones were set forth in the agreement and were for: 1. Information to be furnished by Jones which would enable the entryman to locate and file a homestead upon one hundred and sixty acres of land and for affidavits necessary in making such filing, $185.00; 2. The building of a house upon the land by Jones, $100.00; 3. The clearing and cultivating of the land by Jones $175.00; 4. The advance by Jones of the fees to make and perfect the filing, $60.00, making a total of $520.00. After final proof Jones was to procure a loan for *each* entryman for an amount not to exceed the sum of $720.00. Here was a difference of $200.00 between the advances to be made by Jones as provided for in the agreement and the amount of the loan. Manifestly this written

agreement required scrutiny and careful inquiry into the facts and circumstances under which it was entered into and was to be carried out.

The defendant was a witness in his own behalf. He testified that he had heard about this land being taken on the Siletz and he sent a Mr. Mead over to make an examination of it—to cruise it. The meaning of the term "cruise" as here used is defined by the Standard Dictionary as: "A report of a timber surveyor showing the character and amount of timber in a stand." The land in controversy is timber land and the purpose of the survey was therefore to ascertain its value as timber land and not as agriculture land. The witness said he had in mind at that time to locate soldiers' widows on the land and he had a contract prepared by a Mr. Potter, who, it appears was a lawyer; that he went to see a Mr. Wells to see if he (Wells) could secure the signatures of widows to these contracts. He went to Wells because he was Adjutant General of the G. A. R. of the state and as such knew all, or a great many of his comrades. After he had secured the signatures of thirteen or fourteen soldiers' widows he ascertained that there were not very many more soldiers' widows who were eligible for claims. With respect to those that were secured, no houses were built on the claims because it was thought it was not required, but the Interior Department decided that a soldier's widow had to identify herself with the land by some act of settlement. The result was, all these widows' claims were cancelled by the Secretary of the Interior, but the witness had already turned his attention to the ex-soldiers' claims in their own right and he employed Mr. Wells to secure signatures to the claims of ex-soldiers, for which he paid Wells $5.00 each. The witness was asked whether these contracts "were prepared before the entrymen were secured." He answered: "Why yes, they were prepared,—that was the first thing that was done, was to prepare the contracts, and those contracts in blank were given to Mr. Wells and he brought them back to my office signed. There were very few, if any, of those entrymen that I ever saw at that time. They were signed not in my presence or not from any conversation that I had with him or with them, but the signatures were secured by Mr. Wells."

The witness testified that in accordance with the terms of the agreement he took a mortgage from each of the nine entrymen mentioned in the complaint for $720.00 except in one instance where the entryman gave him a quit-claim deed. He acquired title after the patents had been issued to four of the claims. The title to the remaining five he did not get. He was not looking to the soldiers for the security. There was no individual security there. He did not expect to recover against the soldiers. He was looking to the land. He was asked if he expected the old soldiers to pay off the advances he had made to them. He answered that he hoped they would. He was asked where he thought they were going to get the money to pay them off. He replied that he supposed they would sell the land like most homesteaders did.

J. L. Wells was a witness for the United States and he testified

that he was a member of the G. A. R.; that he had made a filing for himself and entered into the contract with defendant Jones, mentioned in the complaint. He also interviewed and secured contracts with the right others described as entrymen in the complaint. He was asked concerning his own entry if he at any time had intended to file on the land as a home. He answered "No, not exactly." He was asked if any of the others intended to file upon the land as homes. He answered: "Not exactly as he understood it." With respect to the Teghtmeier claim the witness had made affidavit before the land office to the effect that the claimant and family made the homestead his continuous residence except what time he had been off for a while; that the claimant was married and his family resided with him. He was asked if that was true. He replied: "No, that it was not true." He testified that the claims were not taken up as homesteads; that he proved up his own claim by commuting the same; that commutation fee was furnished by Jones. After he got title to the land he sold the same to Jones for $200.00. He was asked if that was the understanding he had in the beginning—that he was to do that. He answered: "That was the understanding." There is much more testimony of this character in the record. It was clearly sufficient to justify the court in denying defendant's motion for an instructed verdict in his favor.

The defendant contends that the trial court erred in admitting in evidence the form of contract purporting to have been entered into between the defendant Jones and certain widows of deceased soldiers, and the evidence of witnesses to the effect that defendant had procured widows to file on lands in the Siletz Reservation without settlement. That evidence was also admitted to show final proof and oral testimony of a number of ex-soldiers who had contracted with the defendant in the same manner and form as had the nine settlers whose claims went to patent in this case. This evidence was admitted as tending to show with what intent and purpose the defendant acted with reference to the nine claims here involved, and for no other purpose, and the jury was so instructed by the Court. The evidence was properly admitted. Jones v. U. S. 162 Fed. 417; Jones v. U. S. 179 Fed. 584; Hallowell v. U. S. 253 Fed. 865.

The evidence as to the value of the timber land involved in this action was plainly admissible. We think the citation of authorities is unnecessary in support of that rule. The refusal of the court to give a requested instruction concerning the absence of wrongful intent is assigned as error. The instruction requested was fully covered by the instructions given by the court. It is urged that the court erred in giving an instruction relative to the matter of interest as an element in the measure of damages. The objection to the instructions of the court was general. The exception was "to the refusal of the court to give the instruction- requested by the defendant which were not given."

In Hammond v. U. S. 246 Fed. 40, Judge Ross, speaking for this Court said:

"The rule is established by decisions almost in-umerable that, to entitle an appellant to call in question instructions given by a trial court to the jury, the exception or exceptions taken thereto must be sufficiently specific to direct the attention of the Court to the particular error or errors complained of, to the end that the court may correct the error, should one be found to exist, before the retirement of the jury."

Finding no error in the record, the judgment of the District Court is affirmed.

[Endorsed:] Opinion. Filed May 10, 1920. F. D. Monckton, clerk, by Paul P. O'Brien, deputy clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3342.

WILLARD N. JONES, Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA, Defendant in Error.

In Error to the District Court of the United States for the District of Oregon.

Judgment.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the District of Oregon and was duly submitted:

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is affirmed.

[Endorsed:] No. 3342. United States Circuit Court of Appeals for the Ninth Circuit. Willard N. Jones vs. The United States of America. Judgment. Filed and entered May 10, 1920. F. D. Monckton, clerk, by Paul P. O'Brien, deputy clerk.

Petition for Writ of Error from the Supreme Court to the Circuit Court of Appeals for the Ninth Circuit.

No. 3342.

WILLARD N. JONES, Plaintiff in Error,

vs.

UNITED STATES OF AMERICA, Defendant in Error.

Your petitioner, Willard N. Jones, plaintiff in error in the above entitled cause, respectfully shows that the above cause is now pending in the United States Circuit Court of Appeals for the Ninth Circuit, and that a judgment has therein been rendered on the 10th day of May, 1920, affirming a judgment of the District Court of the United States, for the District of Oregon, and that the matter in controversy in said suit exceeds $1,000.00, besides costs, and that the jurisdiction of none of the courts above mentioned is or was dependent in anywise upon the opposite party to the suit or controversy, being aliens and citizens of the United States, or citizens of the different states, and that this cause does not arise under the patent laws, nor the revenue laws, and that it is not an admiralty case, and that it is a proper case to be reviewed by the Supreme Court of the United States upon writ of error;

And, therefore, your petitioner would respectfully pray that a writ of error be allowed him in the above entitled cause directing the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, to send the record and proceedings in said cause, with all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith filed by said plaintiff in error, may be reviewed, and if error be found, corrected according to the laws and customs of the United States.

WILLARD N. JONES,
Plaintiff in Error.
By JOHN H. HALL,
His Attorney.

[Endorsed:] Petition for Writ of Error from Supreme Court U. S. Filed June 7, 1920. F. D. Monckton, clerk, by Paul P. O'Brien, deputy clerk.

[Endorsed:] (Copy.) No. 3342. In the United States Circuit Court of Appeals, for the Ninth Circuit. Willard N. Jones, Plaintiff in Error, vs. United States of America, Defendant in Error. Petition for Writ of Error. John H. Hall, 802 Wilcox Bldg., Portland, Oregon, Attorney for Plaintiff in Error.

Order Allowing Writ of Error.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3342.

WILLARD N. JONES, Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA, Defendant in Error.

On this 7th day of June, 1920, the above named plaintiff in error, appearing by John H. Hall, of his attorneys, and filing herein and presenting to this court his petition praying for an allowance of a writ of error and assignment of errors intended to be urged by him, and praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, be sent to the United States Supreme Court, sitting in the City of Washington, in the District of Columbia, and that such other proceedings may be had as may be proper in the premises.

Now, on consideration thereof, and inasmuch as a Supersedeas Bond on Writ of Error from this Court to the District Court provided also for a Writ of Error from the Supreme Court of the United States it is ordered that the said Bond may stand as a Bond on Writ of Error from the Supreme Court of the United States.

(Sgd.) W. H. HUNT,
United States Circuit Judge.

[Endorsed:] Order allowing writ of error from Supreme Court U. S. and re supersedeas bond. Filed June 7, 1920. F. D. Monckton, clerk, by Paul P. O'Brien, deputy clerk.

Assignment of Errors.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3342.

WILLARD N. JONES, Plaintiff in Error,

vs.

UNITED STATES OF AMERICA, Defendant in Error.

And now comes the plaintiff in error, Willard N. Jones, by John H. Hall, of his attorneys, and says that — the record and proceedings aforesaid of the said United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause, and in the rendition of final judgment therein, manifest error has intervened to the prejudice of said plaintiff in error in this, to-wit:

I.

Said Circuit Court of Appeals erred in entering judgment affirming the judgment of the District Court of the United States for the District of Oregon, for $18,204.84, and $610.79 costs of suit, entered on the 10th day of May, 1920, in favor of said defendant in error and against said plaintiff in error.

II.

Said Circuit Court of Appeals erred in not reversing the said judgment of the United States District Court aforesaid, and in not remanding said cause to said District Court for a new trial.

III.

Said Circuit Court of Appeals erred in affirming and approving the ruling of the said District Court in overruling the objection of plaintiff in error to the taking of any evidence in this cause by the court for the reason that the allegations contained in plaintiff's complaint, and the admissions and allegations contained in plaintiff's reply, do not show that defendant in error has any cause of action against the plaintiff in error, but do show affirmatively that the defendant in error was not misled or deceived by accepting final proofs and issuing patents to the nine entrymen named in its complaint as being the entrymen, whom plaintiff in error caused to file upon the lands described in complainant's complaint herein.

IV.

Said Circuit Court of Appeals erred in affirming and approving the ruling of the said District Court, admitting the testimony of the witness, Robert A. Miller, called and sworn on behalf of defendant in error, a lawyer by profession, who testified that he represented a client by the name of Moulton in a contest at Oregon City Land Office, and who testified that he had compromised said contest with defendant Jones, but that said claims then in controversy were not one of the nine claims contained in plaintiff's complaint.

V.

Said Circuit Court of Appeals erred in affirming and approving the ruling of the said District Court in admitting the testimony of Malcolm Dobie, called and sworn as a witness on behalf of defendant in error, for the purpose of proving the value of the lands described in complainant's complaint, for the reason that said witness testified that he was not familiar with what timber bought and sold for in the Siletz Indian Reservation; that he had never been there; but that said witness was permitted to testify to the value of the land outside of the Reservation, and a considerable distance from the land

in question. For the reason that said witness was not qualified and had not sufficient knowledge to testify as to value and had never seen the lands described in complainant's complaint. And said witness was further permitted by said court to testify as to the value of timber from hearsay, and not from his own knowledge.

VI.

Said Circuit Court of Appeals erred in affirming and approving the ruling of the said District Court, admitting the testimony of David Edgar, called and sworn as a witness on behalf of complainant, for the purpose of proving the value of the lands described in complainant's complaint, and who testified that he had cruised other lands not in the immediate vicinity of the lands described in the complaint, and that the values fixed by him were from hearsay and not from personal knowledge; that he did not know the price of timber in that vicinity, nor the price of stumping, and, therefore, was not a competent witness to fix values.

VII.

The said Circuit Court of Appeals erred in affirming and approving the ruling of said District Court in admitting the testimony of W. H. Stemmick, called and sworn as a witness on behalf of complainant, who testified that he was a timber cruiser, but did not know as to what timber was buying and selling for in the Siletz Indian Reservation, or that locality in 1902; that he had not been buying or selling timber. He was permitted to testify from hearsay as to what land had been bought and sold for in that vicinity; that the lands that he had cruised were not the lands described in complainant's complaint. And said witness was not qualified to testify as to the value of the lands described in complainant's complaint.

VIII.

Said Circuit Court of Appeals erred in affirming and approving the ruling of said District Court in admitting the testimony of the witness, R. H. Howell, called and sworn on behalf of the complainant, who testified that he was the County Clerk of Lincoln County, Oregon; that he had been over the Siletz Indian Reservation and knew the geography of the country fairly well; had never been in the hills, but had been up and down the river. Said witness was permitted by the Court to testify as to what the timber lands in the Siletz Indian Reservation were being sold and bought for in 1902, without any personal knowledge, but from hearsay only.

IX.

Said Circuit Court of Appeals erred in affirming and approving the ruling of said District Court, overruling motion of plaintiff in error for judgment on non-suit at the close of defendant in error's case a

chief, for the reason that defendant in error had failed to prove such case as entitled the court to take the case to the jury, and that defendant in error had wholly failed to prove any case as against the plaintiff in error.

X.

Said Circuit Court of Appeals erred in overruling motion of plaintiff in error for directed verdict at the close of all the testimony in the case and before argument, and after defendant in error and plaintiff in error had each rested, for the reason that the testimony adduced upon the trial was insufficient to warrant the court in submitting the case to the jury.

XI.

Said Circuit Court of Appeals erred in affirming and approving the ruling of the said District Court in refusing to give the following special charge to the jury, tendered by plaintiff in error:

"The complaint charges in effect that defendant Jones, with a view and intention of acquiring title in himself to the lands here in question, caused the same to be cruised, and, designing and intending to deceive the officers of the United States and cheat it out of the title of said lands, caused the nine persons named in the complaint to make false and fraudulent homestead entries on the nine homesteads described in the complaint, and that it was not intended by Jones that any of said entrymen should establish a residence or reside upon their respective claims; that it was designed and intended by Jones that each of said entrymen should falsely make proof before the land officers of the United States, that, during the life of said homestead entries they had complied with the law in regard to residence, improvement and cultivation; and it is alleged that such false and fraudulent proof was made before the land officers at Oregon City, and that based thereon the said officers issued final receipts to said entrymen.

In order to recover in this case, it is incumbent upon the part of the Government to prove to your satisfaction by a preponderance of the evidence, that Jones intended to gain title to these lands in himself or others associated with him (except the homesteaders), and unless such intent is proven to your satisfaction by a preponderance of the evidence, then the case of the Government fails and your verdict should be for the defendant."

XII.

Said Circuit Court of Appeals erred in affirming and approving the ruling of the said District Court, in refusing to give the following special charge to the jury requested by plaintiff in error, to-wit:

"If you find that defendant Jones, prior to the issuance of final receipts to these nine entrymen by the United States Land Office at

Oregon City, had no intent to gain title in himself, or for his benefit, in these lands, then it is immaterial whether or not defendant knew or believed that the entrymen had complied with the laws of the United States in regard to settlement, residence and cultivation of their respective claims."

XIII.

Said Circuit Court of Appeals erred in affirming and approving the ruling of the said District Court in refusing to give the following special charge to the jury, requested by plaintiff in error, to-wit:

"I instruct you that the Register and Receiver of the United States Land Office had no lawful right or authority to accept the final proofs of any of these nine entrymen, for the reason that it is apparent on the face of each of the final proofs made by each of the nine homestead claimants, that none of the homestead claimants had complied with the laws of the United States so as to entitle any of them to a final receipt or a patent. By this I mean that the Act of Congress passed in 1894, opening the Siletz Indian Reservation for homestead entry and settlement, required three years' actual residence upon, and cultivation of the land, and did not permit the deduction of time of service of soldiers in the Civil War; whereas, the proofs offered by the homestead claimants and accepted by the Register and Receiver show a residence in each case of not to exceed 1½ years.

The Government has not introduced any testimony to show that the land officials were misled by the proof of residence submitted by the entrymen. Therefore, in the absence of any showing that the Land Department was misled by the proof submitted and by reason of the fact that the proof submitted did not show a residence which complied with the law, I instruct you to return a verdict for the defendant."

XIV.

Said Circuit Court of Appeals erred in affirming and approving the ruling of the said District Court in refusing to give the following special charge to the jury, tendered by plaintiff in error, to-wit:

"I further instruct you as a matter of law, that the officers of the United States Land Office could not have been deceived and misled by these proofs, for the reason that if every statement of the homestead claimant therein contained had been literally true, that none of said final proofs showed a compliance by the homestead entrymen with the laws of the United States, and were not entitled to final certificates or to patents upon such proofs."

XV.

Said Circuit Court of Appeals erred in affirming and approving the ruling of said District Court in refusing to give the following special charge to the jury, tendered by plaintiff in error, to-wit:

"Intent is vital in this cause. If the nine entrymen who filed on the nine claims in question honestly believed they knew what were the requirements of the homestead law and if these entrymen acquired what they believed to be correct information as to the requirements of the homestead law prior to meeting Jones or entering into the plan complained of, or secured such information independent of Jones, then if these entrymen honestly believed they were complying with the law, then Jones cannot be held responsible for an act of these entrymen based upon a mistaken idea of the law.

If Jones should have honestly given a mistaken interpretation of the law, he could not be held responsible because the wrongful intent would be absent."

XVI.

Said Circuit Court of Appeals erred in affirming and approving the following instruction given by the District Court to the Jury, directing them to add the legal interest at the rate of six per cent per annum, to their verdict as a part of the measure of damages, which instruction so given is as follows:

"I will now instruct you touching the measure of damages in the event that you find for the plaintiff. If, under the testimony, you are convinced that the plaintiff in this action is entitled to recover, I instruct you that the measure of damages which plaintiff will be entitled to recover from defendant would be the market value of such of these nine claims as you may find that the Government is entitled to recover, at the time of the issuance of the final certificates by the land officers of the United States; that is, such price as the lands would at that time have brought in open market, offered by a seller who was not obliged to buy, with legal interest at the rate of 6 per cent per annum from that date to this. And in arriving at this conclusion, you may take into consideration the location of the lands, their quality, and their accessibility to roads, railways, or other means of transportation, and from all the legitimate facts before you, determine what the reasonable value of these lands was at the time that the Government parted with its title. You will bear in mind the testimony adduced on this subject."

XVII.

Said Circuit Court of Appeals erred in rendering judgment against the plaintiff in error and in favor of said defendant in error for costs of suit in said Circuit Court of Appeals.

Wherefore, the said Willard N. Jones, plaintiff in error, prays that said errors aforesaid, and other errors appearing in the record of said United States Circuit Court of Appeals in the above entitled cause to the prejudice of plaintiff in error, the said judgment of the said United States Circuit Court of Appeals be reversed, annulled, and for naught esteemed, and the said cause be remanded to the United States District Court, for the District of Oregon, with instruction to grant a new trial in said cause, or for such further proceeding in said

cause as may be determined upon by this Honorable Court to the end that justice may be done in the premises.

JOHN H. HALL,
Attorney for Plaintiff in Error.

[Endorsed:] Assignment of errors on writ of error from Supreme Court U. S. Filed June 7th, 1920. F. D. Monckton, clerk, by Paul P. O'Brien, deputy clerk.

[Endorsed:] (Copy). No. 3342. In the United States Circuit Court of Appeals for the Ninth Circuit. Willard N. Jones, plaintiff in error, vs. United States of America, defendant in error. Assignment of errors. John H. Hall, 802 Wilcox Building, Portland, Oregon, attorney for plaintiff in error.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3342.

WILLARD N. JONES, Plaintiff in Error.

vs.

THE UNITED STATES OF AMERICA, Defendant in Error.

Certificate of Clerk U. S. Circuit Court of Appeals to Transcript of Record upon Return to Writ of Error from the Supreme Court of the United States.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing Ten Hundred and Forty-four (1044) pages, from and including 1 to and including 1044, and comprising two volumes marked, respectively, Vol. 1 and Vol. 2, to be a full, true, and correct copy of the complete record in the above entitled cause, including the assignment of errors, and of all proceedings had in the above entitled cause, and of all papers, including the opinion filed in said Circuit Court of Appeals in the above entitled case, as the originals thereof remain on file, and appear of record in my office, and that the same, together with the following marked original exhibits, viz: Government's Exhibits Nos. 1 to 17, inclusive; 19 to 30, inclusive, and 32, constitute the transcript of record and return to the writ of error from the Supreme Court of the United States in the above entitled cause.

Attest my hand and seal of the said United States Circuit Court of Appeals for the Ninth Circuit at the city of San Francisco, in the State of California, this 16th day of June, A. D. 1920.

[Seal of United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
Clerk.

By PAUL P. O'BRIEN,
Deputy Clerk.

Writ in Error from the Supreme Court of the United States of America to the Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit, Greeting:

Because, in the record and proceedings as also in the rendition of the judgment of a plea, which is in the said Circuit Court of Appeals before you, or some of us, between Willard N. Jones, plaintiff in error, and the United States of America, defendant in error, a manifest error hath happened, to the great damage of said plaintiff in error as by his complaint appears. We, being willing that error, if any hath been, should be corrected, and full and speedy justice done to the parties aforesaid in this behalf; *to* command you, if judgment be therein given, then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within sixty days from the date hereof; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, this 7th day of June, in the year of our Lord, One Thousand, Nine Hundred and Twenty.

[Seal of United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
Clerk U. S. Circuit Court of Appeals for the Ninth Circuit,
By PAUL P. O'BRIEN,
Deputy Clerk.

Allowed by:
W. H. HUNT,
United States Circuit Judge.

STATE OF OREGON,
County of Multnomah, ss:

Due service of the within Writ in Error is hereby accepted in Multnomah County, Oregon, this 10th day of June, 1920, by receiving a copy thereof, duly certified to as such by John H. Hall, Attorney for Plaintiff in Error.

LESTER W. HUMPHREYS,
United States District Attorney.

[Endorsed:] Docketed. No. 3342. In the United States Circuit Court of Appeals for the Ninth Circuit. Willard N. Jones, plaintiff in error, vs. United States of America, defendant in error. Writ of error. Filed Jun. 12, 1920. F. D. Monckton, clerk, by Paul P. O'Brien, deputy clerk. John H. Hall, 802 Wilcox bldg., Portland, Oregon, attorney for plaintiff in error.

Return to Writ of Error.

The answer of the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

As within we are commanded, we certify, under the seal of our said Circuit Court of Appeals, in a certain schedule to this writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the Supreme Court of the United States, within mentioned, at the day and place within contained.

We further certify that a copy of this writ has been duly lodged for the within named defendant in error.

Dated at San Francisco, California, this 16th day of June, A. D. 1920.

THE JUDGES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

[Seal of United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
Clerk.
By PAUL P. O'BRIEN,
Deputy Clerk.

Citation on Writ of Error.

UNITED STATES OF AMERICA,
Northern District of California, ss:

To the United States of America, defendant in error, and to Lester W. Humphreys, United States district attorney, attorneys for defendant in error, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States in the City of Washington, in the District of Columbia, within sixty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the United States Circuit Court of Appeals for the Ninth Circuit, wherein the United States of America is defendant in error, and Willard N. Jones, is plaintiff in error, to show cause, if any there be, why the judgment in said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at San Francisco, California, in said District, this 7th day of June, in the year of our Lord, one thousand, Nine Hundred and twenty.

W. H. HUNT,
United States Circuit Judge.

STATE OF OREGON,
County of Multnomah, ss:

Due service of the within Citation on Writ of Error is hereby accepted in Multnomah County, Oregon, this 10th day of June, 1920, by receiving a copy thereof, duly certified to as such by John H. Hall, Attorney for Plaintiff in Error.

LESTER W. HUMPHREYS,
United States District Attorney.

[Endorsed:] Docketed. No. 3342. In the United States Circuit Court of Appeals, for the Ninth Circuit. Willard N. Jones, plaintiff in error, vs. United States of America, defendant in error. Citation on writ of error. Filed Jun. 12, 1920. F. D. Monckton, clerk, by Paul P. O'Brien, deputy clerk. John H. Hall, 802 Wilcox bldg., Portland, Oregon, attorney for plaintiff in error.

Endorsed on cover: File No. 27,801. U. S. Circuit Court Appeals, 9th Circuit. Term No. 444. Willard N. Jones, plaintiff in error, vs. The United States of America. Filed July 12th, 1920. File No. 27,801.

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No. [redacted]103

Supreme Court of the United States

OCTOBER TERM, 1920

WILLARD N. JONES
Plaintiff in Error
vs.
THE UNITED STATES OF AMERICA
Defendant in Error

Brief on Behalf of Plaintiff in Error

JOHN H. HALL,
Wilcox Bldg., Portland, Oregon,
JAY BOWERMAN,
Yeon Bldg., Portland, Oregon,
Counsel for Plaintiff in Error.

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No. 444

Supreme Court of the United States

OCTOBER TERM, 1920

WILLARD N. JONES
Plaintiff in Error
vs.
THE UNITED STATES OF AMERICA
Defendant in Error

Brief on Behalf of Plaintiff in Error

STATEMENT OF THE CASE.

This is a writ of error sued out by plaintiff in error to correct a judgment rendered by the District Court in favor of the United States of America, and against plaintiff in error, Willard N. Jones, in the sum of $18,204.84, with costs and disbursements taxed in favor of the United States at $610.79.

Pleadings.

The United States filed its bill of complaint against plaintiff in error, alleging that the lands

described in the complaint were, prior to the 16th day of May, 1895, a part of, and included within, the limits and boundaries of the Siletz Indian Reservation in the State of Oregon, and that the lands described in the bill of complaint, with other lands, had been ceded by the Indians to the United States, and that thereafter on the 15th day of August, 1894, the Congress of the United States duly passed an Act making provision for the disposal of such lands, the title of which had been obtained by the United States from the Indians, which Act was passed June 30, 1895 (28 Stat. L., 286-326), which Act provided for the disposal of the lands under the Townsite Law and under the provisions of the Homestead Law, providing that at the time of making his original entry the entryman should pay fifty cents per acre in addition to the fees required by law, and on final proof should pay the further sum of one dollar per acre, and that three years' actual residence on the land should be established by such evidence as is now required in homestead proofs as a prerequisite to title or patent.

They further alleged that on the 17th day of May, 1900, Congress passed an Act providing for free homestead on the public lands by actual *bona fide* settlers, and reserving the public lands for that purpose; in and by which said Act it was provided that all settlers under the Homestead Laws of the United States upon public lands who shall have

resided upon the tract entered in good faith for the period required by the existing law, should be entitled to a patent to the lands so entered, upon the payment to the local Land Office, of the usual and customary fees, and no other or further charge of any kind whatsoever should be required from such settler to entitle him to a patent to the lands covered by his entry.

It is then alleged:

> "That on or about August, 1900, the defendant, Willard N. Jones, *with a view to, and the intention of, acquiring title in himself and persons associated and interested with him*, to the lands hereinafter described, together with a large quantity of other lands ceded and open to settlement under the homestead laws as hereinbefore set forth, caused a large tract thereof, including the lands hereinafter described, to be cruised for the purpose of ascertaining the quantity of timber standing on all of said lands being then and there heavily timbered and very valuable for the timber thereon."

It is then alleged that on and between the 15th day of August, 1900, and the 25th day of February, 1901, the said Jones, "designing and intending to deceive the officers of the United States having authority relating to and over the public lands of the United States, and to defraud and cheat complainant out of the title, use and possession of a large portion of its unappropriated public lands

open to settlement and entry under the homestead law as aforesaid by means of soliciting and procuring persons qualified to make homestead entries of said lands, to make false and fraudulent and collusive homestead entries upon portions of said ceded land then unappropriated, did, on and between the above mentioned dates, solicit and procure the hereinafter named persons, together with a large number of other persons, to make, in the manner and form prescribed by law, homestead applications and affidavits at the United States Land Office therein at Oregon City, Oregon, for the lands hereinafter specifically described, together with others of said lands."

The complainant then sets out the names of nine entrymen together with the dates of affidavits and applications and the description of the land entered by them.

In Paragraph VII (page 11 of Transcript) it is alleged that the said defendant Jones solicited and procured said persons and each of them to apply for and enter said lands, and that before the filing of said applications and entries respectively under the homestead law, he prevailed upon and induced each of said entrymen to subscribe to a written document or agreement, which document is set out in full on pages 12, 13, 14 and 15 of Transcript.

They then allege in Paragraph VIII of bill of complaint as follows:

"That in and by said instrument and document above mentioned, to which he induced and persuaded each of said entrymen to subscribe or assent, the said defendant, Willard N. Jones, intended to conceal HIS DESIGN AND INTENTION TO ACQUIRE TITLE TO THE LANDS WHICH WERE ENTERED and applied for by the said entrymen as aforesaid, and to conceal the fact that it was the intention and purpose as hereinafter set forth, of the said defendant, Willard N. Jones, and said entrymen, to retain the then places of residence of each of said entrymen, and that it was not intended by the said Willard N. Jones or any of said entrymen to reside upon or make their homes upon the lands entered and applied for by them, as required by law, before the issuance of patent thereto; that all of said entrymen at the time of their said applications and entries, resided in Portland, Multnomah County, Oregon, except the entryman Benjamin S. Hunter, who then resided in Dundee, Yamhill County, Oregon, and neither the said Willard N. Jones or any of said entrymen, at the time of making said applications and entries, or at any other time, intended to establish a residence upon the lands entered by said entrymen respectively, or to reside thereon; and the said Willard N. Jones, at the time of said applications and entries, and each of them, well knew, and each of said entrymen well knew, that none of said entrymen intended to establish a residence upon the lands entered or to be entered by them respectively, or to reside

thereon during the life of their respective homestead entries."

They further alleged in Paragraph IX (page 16 of Transcript), that it was designed and intended by said Willard N. Jones at and prior to the applications and entries, and during the life of said entries, that each of said entrymen should make false proof before the officers of the United States, in form prescribed by law, that each of said entrymen had established a residence upon the lands entered by him respectively and had resided continuously thereon for the length of time prescribed by law, and that each of said entrymen had reduced to cultivation and cultivated a substantial portion of said land and had made substantial improvements thereon, and then allege:

> "When, in truth and in fact, as the said Willard N. Jones well knew, none of said entrymen would, at the time of making said proof, have established a residence upon the lands entered by him, nor resided thereon, and would not have cultivated any part thereof nor have made any improvements thereon."

They then allege in Paragraph X (page 17 of Transcript):

> "That thereafter, IN ORDER TO CARRY OUT THE SAID FRAUDULENT INTENTION AND DESIGN TO ACQUIRE TITLE TO SAID LANDS and to procure said entrymen to make false, fraudulent and collusive

applications, affidavits, entries and proofs as aforesaid, and pursuant to the fraudulent and collusive understanding and agreement entered into between the said Willard N. Jones and each of said entrymen and applicants, the said Willard N. Jones caused notice to be given as required by law, of the intention of the respective entrymen to make homestead proof on the lands embraced in their respective entries; that thereafter each of said entrymen offered and made homestead proof in the form prescribed by law, and submitted the same to the officers of the United States Land Office at Oregon City, Oregon, upon the following dates:"

Plaintiff then sets out (page 18 of Transcript) the names of the entrymen, the date of proof and the date and number of final certificate, and then proceeds to allege fraudulent acts of the entrymen and the lack of good faith in making their respective entries, and the construction by defendant Jones of houses and the clearing of small tracts upon each of said entries, but does not specifically charge Jones in said paragraph with any knowledge of the alleged fraudulent acts of the homestead entrymen. But it is alleged in Paragraph XI that defendant Jones paid to the officers of the United States all fees and sums of money and furnished proof witnesses and their expenses in connection with their said entries, and that the same was paid

and said proof made for the purpose of defrauding the United States out of the lands embraced in said respective entries; and "the said Willard N. Jones knowingly induced and procured each of said entrymen to make said false and fraudulent proof aforesaid and paid all the expenses of each in relation thereto and connected with said entries."

Plaintiff then further alleged (page 21 of Transcript) that the land officers of the United States at Oregon City, Oregon, being ignorant of the false and fraudulent representations made by the said entrymen in their respective homestead proofs, and having no means of ascertaining the truth thereof, upon the receipt of said sums of money as fees, and upon the payment of the purchase price for said lands, the same being furnished and paid by the defendant Willard N. Jones, and upon the submission of said proofs, issued certificates to each of said entrymen to the effect that upon presentation thereof to the Commissioner of the General Land Office the entryman named therein would be entitled to receive a patent for the land described in the homestead entry. That the dates and numbers of the final certificates so issued are as set forth in Paragraph X thereof.

It is then alleged that each of said entrymen, after the submission of final proof and the issuance of said final certificates, executed a mortgage

to Willard N. Jones and received a sum of money from him in conformity with the instrument to which each entryman had assented and subscribed to as set forth in Paragraph VII.

It is alleged in Paragraph XII (page 22 of Transcript) that upon the transmission by the land officers of the United States of Oregon City, Oregon, of the papers and testimony relating to each of said homestead applications, that the President of the United States and the officers of the Department of the Interior and the General Land Office of the United States, being ignorant of the false and fraudulent character of said applications, entries, and proofs, and having no means of ascertaining the same, did issue to each of said applicants and entrymen a patent purporting to convey to the respective applicants and entrymen the lands described in their respective applications, which patents were issued between September, 1902, and October, 1903.

And it is alleged in Paragraph XV (page 23 of Transcript):

> "That all of the false and fraudulent representations made by the several entrymen and the witnesses, as hereinbefore set forth, were with the knowledge and at the solicitation of the said defendant, Willard N. Jones, and with the intent to deceive and defraud the United States out of the use of, title to, and

possession of the lands hereinbefore described, and the complainant relied upon the false and fraudulent representations so made as aforesaid and was deceived and defrauded thereby, and by reason of such false and fraudulent representations and unlawful, collusive and corrupt agreement and understanding between the said entrymen and the said defendant, plaintiff was wrongfully and unlawfully induced to issue said patents and part with the title to said lands to its damage in the sum of $133,000."

It is alleged in Paragraph XVI (page 23 of Transcript):

"That at the time of the applications and entries of said lands and the issuance of patents therefor, the lands were reasonably worth the aggregate sum of $31,400, and that said lands, at the time of filing the complaint, were worth the sum of $133,000."

Defendant, in his amended answer (page 25 of Transcript), admits the first three paragraphs of the complaint to be true, and denies each and every other material allegation contained in plaintiff's bill of complaint.

Defendant then pleaded, as a first further and separate answer and defense (page 40 of Transcript), that some time in the year of 1900 he did cause said lands described in the complaint, and others, to be cruised for the purpose of ascertaining approximately the amount of timber thereon,

and for the purpose of ascertaining the nature and character of the land, to the end that he might engage in the business of locating thereon qualified persons under the homestead laws who desired to enter land subject to entry under such law, and that the plan adopted by defendant was as set out in Paragraph VII of plaintiff's bill of complaint; and that at different times, and prior to making their respective entries, he entered into contracts with the several parties mentioned and named in Paragraph VI of the bill of complaint. That all of said contracts were in substantially the same form as that set forth in Paragraph VII. And defendant further alleges:

> "That in each instance it was the desire, purpose and intention of this defendant that said parties respectively, and each party or person with whom he contracted as aforesaid, should, in all respects, comply with the homestead laws of the United States, and the purpose and object of this defendant in entering into such contract was to earn the fee charged for locating the entrymen. That in each instance this defendant complied strictly with the terms of the agreement entered into between him and the entrymen, and in each instance this defendant avers that he believed at the time proof was made, that each entryman had faithfully and honestly complied with the homestead laws of the United States in the matter of making settlement, cultivation, improvements and proof under the homestead

laws of the United States, and after making the required settlement, cultivation, improvements and proofs the entrymen executed to this defendant in each case a mortgage on the land entered to secure to this defendant the payment of the amount by him advanced under such contract, the same being the mortgage in the complaint mentioned and referred to. That in all said matters and transactions, and in every matter connected with said entries, this defendant acted in good faith and without any intention or purpose to cheat, defraud or to deceive the complainant."

Defendant, for a second further and separate answer and defense, (page 40 of Transcript), pleads that the cause of action in the complaint alleged accrued more than six years next prior to the date of filing the complaint in this action, and did not accrue at any time within the six years next before the commencement of this action.

Defendant, for a third further and separate answer and defense, avers (page 42 of Transcript) as follows:

"That the several tracts of land in the complaint described as having been respectively entered by the entrymen mentioned in said complaint, were at the time the same were entered subject to entry as homesteads under and pursuant to the Act of Congress of August 15, 1894, and each of said tracts of land was entered as a homestead at the time and by the

person alleged in the said complaint, under said Act of Congress, and not otherwise, except that the said entrymen did not pay the sum of $1.50 per acre, or any sum per acre, for said lands so entered, or any thereof (except that said entryman Wells paid for commutation as hereinafter averred), because of the Act of Congress of May 17, 1900, referred to in Paragraph III of said complaint. This defendant further alleges that the said Act of August 15, 1894, among other things, required and provided that as a condition precedent to acquiring title to any such lands, under the homestead laws, an entryman should actually reside on and cultivate the lands so entered for the period of three years, and that such actual residence should be established by the testimony of two witnesses in addition to the testimony of the entrymen."

The allegations in this paragraph are specifically admitted in plaintiff's reply (page 57 of Transcript).

In Paragraph II, defendant alleges (page 43 of Transcript):

"That the entrymen named in the said complaint, namely, Benjamin S. Hunter, Oliver I. Connor, William Teghtmeier, Richard P. Depue, Joseph Gillis, Thomas Johnson, Edward C. Brigham, and Anthony Gannon, respectively, entered the respective tracts of land in the complaint described and averred to have been by them respectively entered, under the said

Act of August 15, 1894, and on the dates in the said complaint alleged. That none of the said entrymen last named, either by himself or by his final or homestead proof witnesses, or any witness produced by him, or otherwise, when he made his homestead or final proof, or at any time, claimed, represented or testified in making such proof, or any proof, or otherwise, that he had resided upon the said land by him entered for a period of three years or for any other or greater period than as follows: That is to say, the said Edward C. Brigham and his final proof witnesses stated and testified that he, the said Edward C. Brigham, first established a residence on the land by him entered as aforesaid in October, 1900, and his homestead or final proof, and the only proof made and submitted by him, was made and submitted on December 23, 1901. That the said Anthony Gannon made final or homestead proof, and the only proof made by him under his said homestead entry, on the 25th day of November, 1901, and in making such proof stated and testified, as did his final proof witnesses, that he went upon and made settlement and first acquired a residence on the said tract by him entered October 1, 1900. That the said Joseph Gillis made and submitted final or homestead proof under his entry aforesaid, and the only proof made by him under said entry, on the 4th day of November, 1901, and in making said final proof testified, as did also his final proof witnesses,

that he first established his residence on the land so entered by him on the 1st day of October, 1900. That the said Oliver I. Connor made his homestead or final proof, and the only proof made by him under his said homestead entry, on the 4th day of November, 1901, and in making such proof testified and represented that he had first made and established actual residence on the land so entered by him on the 26th day of September, 1900. That the said Benjamin S. Hunter made and submitted the homestead or final proof, and the only proof made by him under his said homestead entry, on the 23rd day of December, 1901, and in making such proof testified and represented, as did also his final proof witnesses, that he had first made and established actual residence on the land so by him entered in September, 1900. That said Richard P. Depue made and submitted final proof, and the only proof made by him under his entry, on November 25, 1901, and in making such final proof testified, as did his final proof witnesses, that he first established actual residence on the land so by him entered September 24, 1900. That said Thomas Johnson made and submitted homestead or final proof, and the only proof made by him under his said entry, on the 9th day of November, 1901, and in making such proof testified and stated, as did his final proof witnesses, that he had first established a residence on the land so by him entered on September 26, 1900. That said William Teghtmeier

made and submitted final proof, and the only proof made by him under his said entry, on the 26th day of May, 1902, and in making such final proof testified and stated, as did his final proof witnesses, that he first established an actual residence on the land so by him entered in September, 1900."

The allegations in this paragraph are also specifically admitted in the reply (page 58 of Transcript).

In Paragraph III defendant alleges (page 46 of Transcript):

"That each of the said entrymen mentioned in the last above paragraph of this answer, in making his homestead or final proof also made proof of the fact that he had served in the Army or Navy of the United States for periods as follows:

Benjamin S. Hunter enlisted January 4, 1864; discharged December 16, 1865;

Oliver I. Connor enlisted May 2, 1862; discharged May 2, 1865;

William Teghtmeier enlisted June 1, 1861; discharged July 20, 1864;

Richard D. Depue enlisted January 14, 1864; discharged December 18, 1865;

Joseph Gillis enlisted August 2, 1862; discharged June 10, 1865;

Thomas Johnson enlisted November 13, 1861; discharged February 10, 1864;

John L. Wells enlisted September 4, 1864; discharged June 10, 1865;

Edward C. Brigham enlisted August 9, 1862; discharged June 4, 1865; and

Anthony Gannon enlisted September 19, 1861; discharged October 5, 1864.

And had been honorably discharged, and claimed credit under the provisions of sections 2304 and 2305, U. S. R. S., for such military service in lieu of residence on the land by him entered as aforesaid, to the extent of the difference between the period of residence shown by his proof submitted and the full term of three years aforesaid, which claim was in each case considered and allowed by plaintiff in lieu of such portion of the actual residence of three years by law required under said Act of August 15, 1894."

This paragraph is also specifically admitted in plaintiff's reply (page 58 of Transcript).

In Paragraph IV defendant alleges:

"That the plaintiff and its agents and officers, in considering and passing on said final proofs, well knew that each of said entrymen and his final proof witnesses had therein testified, stated and claimed less than two years' actual residence on the part of such entrymen, and neither the said plaintiff nor any of its agents or officers in considering said final proofs believed or understood, or had any reason to believe or understand, that any of said

entrymen had represented or claimed to have resided upon said lands or any thereof for three years, but on the contrary the plaintiff and each and all of its agents and officers, by mistake of law, gave and allowed to each of said entrymen credit for military service as aforesaid, as a major part of the three years' actual residence required by law, and by reason of such mistake of law, and not otherwise, issued the final certificates and patents mentioned and referred to in the complaint."

This paragraph is admitted in plaintiff's reply (pp. 58 and 59 of Transcript), except plaintiff denies that there was a mistake of law on the part of plaintiff that the final certificates and patents mentioned and referred to in the complaint were issued.

Defendant then alleges in Paragraph V (page 48 of Transcript):

"Defendant further alleges that the said entryman John L. Wells, referred to in the complaint of the plaintiff herein, in making the homestead or final proof mentioned in Paragraph X of said complaint, claimed and availed himself of the benefit of the Act of Congress of January 26, 1901, entitled, 'An Act to allow the commutation of homestead entries in certain cases,' under and by the terms of which Act a person making homestead was authorized to make homestead commutation proof under the provisions of Section 2301,

Revised Statutes of the United States."

the allegations of which paragraph are admitted by plaintiff in the reply (page 60 of Transcript).

Defendant then alleges in Paragraph VI (page 48 of Transcript):

> "That under and by virtue of the Act of August 15, 1894, and said Section 2301, the said entryman, John L. Wells, was required by law in making such homestead commutation proof to establish and show that he had actually resided upon the land so entered by him for a period of at least fourteen months."

the allegations of which paragraph are admitted by plaintiff in the reply (page 60 of Transcript).

Defendant alleges in Paragraph VII (page 48 of Transcript):

> "That the said entryman Wells made such homestead commutation proof on the 26th day of May, 1902, and in making such proof testified as follows:
>
> Q. When was your house built on the land, and when did you establish actual residence therein? (Describe said house and other improvements which you have placed on the land, giving total value thereof.)
>
> A. In August or September, 1900—August 1900—log cabin 14 x 16, shingle roof—two acres cleared—some apple trees—considerable of a roadway cut—two acres fenced—about $300.
>
> Q. Of whom does your family consist; and

have you and your family resided continuously on the land since first establishing residence thereon? (If unmarried state the fact.)

A. I was unmarried when I filed. I have been married a little over a year and my wife has been with me on the land since then.

Q. For what period or periods have you been absent from the homestead since making settlement, and for what purpose; and if been previously absent did your family reside upon and cultivate the land during such absence?

A. Temporary absence about four months —when I was absent my wife was with me.

Q. How much time since entry have you actually lived upon the land?

A. Between the time of entry, viz., October 1, 1900, and the present time I have been there five times, remaining there each time from one to two weeks."

which allegations are admitted by complainant's reply, except it is denied that the whole of the testimony and proof of said witness Wells is set forth in said paragraph, and sets forth further testimony of witness Wells and testimony of witness George West (pages 60 to 64 of Transcript).

Defendant alleges in Paragraph VIII (page 49 of Transcript):

"And this defendant avers that by the answers and representations aforesaid the said entryman Wells notified and advised the plaintiff that he had not actually resided upon said

land to exceed ten weeks prior to the date of making such proof, which proof is the homestead proof referred to in the plaintif's complaint. And defendant further avers that the said plaintiff and its officers and agents, in considering said final proof and in issuing the final certificate and patent referred to in the complaint to the said Wells, fully and well knew and understood that said Wells had not resided upon said land to exceed ten weeks, and so knowing and understanding, the said plainitff issued such certificate and the patent to said Wells in the complaint mentioned."

the allegations of which paragraph are admitted by plaintiff (page 64 of Transcript).

And defendant, in his fourth further and separate answer and defense, in Paragraph I thereof (page 50 of Transcript) alleges:

"That each of the entrymen mentioned and referred to in Paragraph II of the Third Further and Separate Answer herein, in making and submitting his final homestead proof in the complaint mentioned and referred to, personally and each of his final proof witnesses testified, stated and advised the plaintiff, its agents and officers, that he, the said entryman, had not resided upon the land by him entered as in the complaint described, or any thereof, prior to the making of his homestead or final proof in the complaint mentioned, for the period of three years, nor for any greater period than from one to one and one-half years.

> That the plaintiff and its officers and agents, in considering said homestead or final proofs and in issuing the final certificates and patents in the complaint mentioned, well knew and understood that each of said entrymen had not resided upon the land by him entered in the complaint mentioned for three years prior to the making of the homestead or final proof in the complaint mentioned, nor for any greater period of time than from one to one and one-half years, but notwithstanding said knowledge and understanding, the plaintiff, its agents and officers, by mistake of law, erroneously issued said certificates and patents in the complaint mentioned."

which paragraph is admitted by plaintiff (pp. 65 and 66 of Transcript), except that plaintiff denies that said certificates and patents were issued by complainant and its agents and officers by mistake or error of law.

Defendant alleges in Paragraph II thereof. (page 51 of Transcript):

> "That the said entryman Wells, in making his homestead or final proof in the complaint mentioned, testified and stated and advised the plaintiff, its agents and officers, that he had not actually resided upon said land prior to the making of said homestead or final proof for a total period of more than ten weeks, and the said plaintiff, its agents and officers, in considering said final proof, well understood and knew that he, the said Wells, had not re-

sided on said land as aforesaid for a period of more than ten weeks, but notwithstanding such knowledge the plaintiff, its agents and officers, by mistake of law, and not otherwise, erroneously issued said certificates and patents in the complaint mentioned. That said Wells paid plaintiff for the tract, consisting of 160 acres, entered by him, in the complaint mentioned, the sum of $240.00, the full minimum price and value thereof, prior to the issuance of the patent therefor, in the complaint mentioned."

Plaintiff, replying thereto (page 66 of Transcript), admits that Wells paid plaintiff for the tract consisting of 160 acres entered by him in the complaint mentioned, the sum of $240.00 on commutation of his said entry, and prior to the issuance of patent therefor as in complainant's complaint alleged, but denies each and every other allegation in said paragraph.

Defendant alleges in Paragraph III thereof, (page 52 of Transcript):

"That prior to the commencement of this action the said tracts of land in the complaint described as having been entered by and patented to the said entryman, Edward C. Brigham, Thomas Johnson, William Teghtmeier and John L. Wells, were, for the full market value thereof, sold and conveyed to and purchased by, and are now owned and held by Chautauqua Lumber Company, a corpora-

tion; and the tracts in said complaint described as having been entered by and patented to said entrymen, Anthony Gannon, Joseph Gillis, Oliver I. Connor, Benjamin S. Hunter, and Richard D. Depue, were, for the full market value thereof, paid by the purchaser, granted, bargained, sold and conveyed to, and are now owned and held by Sunset Timber Company, a corporation of the State of Oregon. That said Chautauqua Lumber Company and said Sunset Timber Company, hereinafter referred to as purchasers, each purchased the land so conveyed to it in good faith without any knowledge, notice, information or belief that the plaintiff claimed any interest therein, or in or to any thereof, or that there was any defect in the title thereto or to any thereof, and each of said purchasers in purchasing said lands so to it conveyed, acted in good faith in all respects and without any knowledge, information, belief or notice whatsoever of the alleged frauds and deceits, or frauds or deceits, or any thereof in the complaint alleged, and each of said purchasers paid for each tract of the lands aforesaid to it conveyed the full market value thereof at the time of purchasing the same."

which allegation is admitted by plaintiff in its reply (p. 67 of Transcript).

Defendant alleges in Paragraph IV (page 53 of Transcript):

"And this defendant avers that by reason

> of the premises, even if it shall be adjudged that the plaintiff is entitled to recover any sum in this action, it cannot have or recover a sum exceeding the government minimum price of said lands by statute provided; namely, the sum of $1.50 per acre."

which paragraph is denied by complainant (page 67 of Transcript).

Plaintiff demurred to defendant's second, third and fourth separate amended answer and defense, for the reason that the facts therein alleged were insufficient in law to constitute a defense to plaintiff's complaint (page 54 of Transcript), which demurrer was by the court overruled as to the third and fourth defenses and sustained as to the second defense (page 56).

Upon this state of the pleadings, defendant objected to taking any testimony on behalf of complainant "for the reason that the allegations in the complaint, admissions and allegations in the reply do not show that the government has any cause of action against the defendant"; (see Bill of Exceptions, page 72 of Transcript), which objection was overruled by the court.

STATEMENT.

The undisputed testimony discloses the following state of facts:

The defendant, Willard N. Jones, coming out to the coast in 1889, saw a circular issued by the Northern Pacific Railroad Company setting forth the rights of settlers to take land, and among other things setting forth that soldiers' widows might take a homestead and make proof without residence or settlement (page 900 of Transcript). In 1892 his mother came out to visit him and they bought a relinquishment of a settler over in the State of Washington. Defendant Jones went to the Land Office at Vancouver and made inquiry there of the Register in regard to the law and was assured that no residence was required of the widow. An entry was made upon the land, and after the proper period elapsed, something like a year, final proof was made. No proof of residence was made and the proof of cultivation being done by persons they had hired to do the cultivating, and thereafter a patent was issued and no question was ever raised about the title by the Government, (page 901 of Transcript).

In about the year 1900, Mr. Jones conceived the idea of locating soldiers' widows on the land in the Siletz Indian Reservation which had been thrown open for settlement. That he ceasulted an attorney, Mr. Potter, who prepared a contract that

Jones was assured was legal and valid in every way, and Jones then went to see Mr. John L. Wells to see if he could secure the signatures of widows of ex-soldiers, (page 902).

After Wells had secured the signatures of a number of soldiers' widows, Wells suggested that he would like to take up a claim and many of his comrades would like to take claims, and Jones then had the form of contract that had been drawn with the widows so changed as to be applicable to ex-soldiers of the Civil War.

That before proceeding to locate soldiers the proposed contract was submitted to Dr. Loomis, Special Agent of the General Land Office located at Oregon City, Oregon, who pronounced it all right. Mr. Jones then took the proposed contract and showed it to Mr. C. B. Moores, the then Register of the Land Office at Oregon City, and he also assured Jones that there was nothing wrong with the contract. He then took the proposed contract to the then United States District Attorney for the District of Oregon, who also assured him that there was nothing in the contract that was illegal. He afterwards sent a copy of this proposed contract, with a letter stating all the circumstances and all the dealings throughout, to Senator Fulton, who was then in the United States Senate, with instructions for him to file a copy of the proposed contract with the Secretary of the Interior, and it was so filed, (page 903).

The contracts between Jones and the Soldiers' widows were all cancelled by the department and none went to patent, (page 904 of Transcript).

The contract referred to is set out in plaintiff's complaint, (page 12 of Transcript), and by the terms thereof the soldier-settler, in consideration of information which would enable him to locate and file a homestead upon 160 acres of the public land within the State of Oregon, agreed to pay to Jones as compensation for such services and information, and for his services to be performed in the preparation of papers and affidavits necessary in making such filing, the sum of $185.00. And it was provided in said contract:

> "The party of the first part (the settler), further agrees to comply with the laws of the United States in regard to residence upon said lands taken as a homestead."

and agreed also to employ Jones to build a house upon the land in consideration of the sum of $100.00, and to clear and cultivate the land to be taken up, or so much thereof as should be required, and for the time required by the laws of the United States in order to perfect title thereto, for which Jones was to receive the sum of $175.00 additional. Jones further agreed to advance to the settler, if required, the amount of fees required at the Land Office in order to make and perfect said filing, and all necessary expenses of the settler in connection therewith not exceeding the sum of $60.00,

which was to be repaid by the settler. And Jones further agreed that after final proof should have been made upon said claims he would, at the option of the settler, procure for him a loan not exceeding the sum of $720.00, to be secured by a first mortgage upon said claim.

In order to produce ex-soldiers as settlers to sign this contract, defendant employed J. L. Wells, (page 135 of Transcript), who was also an ex-soldier, and whose authority and agency was limited to the securing of signatures to the proposed contract between the settler and Jones. Wells testified, as a witness for the plaintiff, (page 231 of Transcript), that he was to have $5.00 for each old soldier that he produced who entered into a contract and took a quarter section, and that he had no other duties to perform except that under his agreement with Jones. That is all that he had to do and all that Jones desired him to do, and all he was authorized to do so far as Mr. Jones was concerned.

And again (page 881 of Transcript) Wells was asked the following questions by counsel for defendant:

> "Q. Now, Mr. Wells, I will ask you whether or not you had any authority to act for Mr. Jones for any other purpose than securing the names of these old soldiers and getting them to sign a contract?

A. I had not. I had no authority whatever.

Q. And that was the limit and extent of your authority from Mr. Jones?

A. Yes, sir."

Mr. Jones testified, (page 910 of Transcript):

"Q. And what authority did Mr. Wells have from you to act in the matter?

A. Mr. Wells was authorized to act as my agent in securing names to these contracts.

Q. Did he have any other authority?

A. He had no other authority; after procuring those names and bringing in those signed contracts, his authority from me ceased."

And again, (page 915 of Transcript), defendant Jones testified:

"Q. Did you authorize Mr. Wells or anyone else to make any representations to Mr. Gillis or to any of these entrymen that you were willing to buy the land or do anything outside of what was contained in the written contract?

A. I never authorized Wells to make any statement, anything at all except what was in the contract. The terms of that contract was what we were entering into and there was nothing outside of that. He was never authorized to make any statement of anything outside of that contract."

Plaintiff did not produce any evidence tending to show that there was any other contract or agree-

ment between the defendant and the entrymen than that contained in the written agreement signed by each of the entrymen, a copy of which agreement is set out in plaintiff's complaint.

Plaintiff did not produce any witness or any evidence to the effect that defendant Jones was ever over in the Siletz country or in the vicinity of these claims during the time of the alleged residence of the settlers, nor that he had any knowledge or information from any source that these settlers were not in good faith residing upon their claims.

Plaintiff did not produce any wtiness or any evidence that defendant Jones had any desire or intent, at the time of entering into these several contracts, to acquire title thereto. The testimony shows that he only acquired title to four of these tracts, and each of these at the soliciation of the settler.

Plaintiff did not produce any testimony whatever to the effect that defendant Jones, or any authorized agent acting for him, solicited or attempted in any way to cause any of the entrymen to make any false answer or statement to the register or receiver of the United States Land Office at time of making final proof, or prompted or suggested any answers made by them at the time of final proof or prior thereto.

Under this state of the pleadings and of the testimony adduced on behalf of the plaintiff, defendant, at the close of all of the testimony offered on behalf of plaintiff in chief, moved the court for a judgment of non-suit, which motion was overruled by the court, (page 837 of Transcript).

At the close of all of the testimony in the case, defendant moved for an order directing the jury to return a verdict for defendant, which motion was also overruled by the court, (page 978 of Transcript).

POINTS AND AUTHORITIES.

"Entrymen unable to make improvements by reason of age or poverty may make contract with another to build dwelling, clear land and furnish the entryman with money to buy stock and provisions, without violation of the homestead laws of the United States."

Conway v. U. S., 95 Fed. 615.

Grubbs v. U. S., 105 Fed. 314-319.

"Mortgaging of homestead by entryman is not alienation where mortgage is given to procure money to improve land or for other purposes."

Fuller v. Hunt, 48 I. 163.

Dickerson v. Bridges, 147 Mo. 235.

Orr v. Ulyatt, 23 Nev. 134.

Stock v. Duvall, 7 Okla. 213.

Hafeman v. Grass, 199 U. S. 342-345.

"After final proof, homestead claimant may, before patent issues, contract or be contracted with, sell or convey, as though patent had issued."

Williamson v. U. S. 207 U. S. 425; 52 L. Ed. 278-310.

U. S. v. Biggs, 211 U. S. 507; 53 L. Ed. 513.

Shiver v. U. S., 159 U. S. 491.

Newkirk v. Murshars, 35 Kan. 77.

"Fraud is never presumed, and where it is alleged the facts sustaining it must be clearly made out."

Farrar v. Churchill, 135 U. S. 609-615.

The Southern Development Co. v. Silva, 125 U. S. 247-249.

King v. Lamborn, 186 Fed. 21-27.

"The established rule is that where cancellation of a patent is sought on the ground of fraud, that the proof of the fraud must be clear and convincing, and cancellation will not be had merely on the ground of suspicious circumstances but must be only that class of evidence which commands respect, and that amount of it which produces conviction."

Maxwell Land Grant Case, 121 U. S. 381-382.

U. S. v. Stinson, 197 U. S. 204.

U. S. v. Clark, 200 U. S. 601-608.

Webb v. U. S. (C. C. A.), 204 Fed. 78.

U. S. v. Cowart, et al., 205 Fed. 316-318.

"Where the means of knowledge are at hand and equally available to both parties, and if the party claiming to have been defrauded does not avail himself of these means and opportunities, he will not be heard to say that he has been deceived by the vendor's misrepresentation."

Slaughter's Admr. v. Gerson, 13 Wallace 379-383.

King v. Lamborn, 186 Fed. 21-28.

Ming v. Woolfolk, 116 U. S., 599-602.

Vol. 14 Am. & Eng. Enc. of Law, page 59.

Bigelow on Fraud, page 139.

First National Bank of Elkhart v. Osborne, 48 N. E. 256.

Fernaux v. Sidney, Webb, et al., 33 Tex. Appeals, 560.

Russell, et al., v. Branham, et al., 8 Blackford (Ind.) 304.

Prince v. Oberholser, 75 Wis. 646.

Slaughter's Admr. v. Gerson, 12 Wall. 385.

Platt v. Scott, 6 Blackford (Ind.) 389.

Robbins v. Hope, 57 Cal. 496.

Kent's Commentaries, Vol. 2, pages 484-485 (4th ed.)

Silver v. Frazier, 85 Mass. 382.

Missouri Lincoln Trust Co. v. Third National Bank of St. Louis, 133 S. W. 357.

Hall v. Johnson, 2 N. W., page 57.

Conway v. U. S., 95 Fed., pages 615-618.

"Conjecture is an unsound and unjust foundation for a verdict. Juries may not legally guess the money or property of one litigant to another."

Midland Valley Road Co. v. Fulgham, 181 Fed. 91-95.

ARGUMENT.

We will first take up the objection interposed by defendant on the trial, to the introduction of any evidence in the case, upon the ground that the allegations in the complaint and the admissions contained in the reply conclusively show that the officers of the Government could not have been deceived to the extent that any of the homestead claimants had sufficiently complied with the laws of the United States to entitle them to final certificate, and that the false representations and testimony given by them upon their final proof, even if strictly true, would not entitle them to patents.

False representations, in order to be actionable, must have been material; that is to say, must have been such that if true, justified the plaintiff in acting as it did in the issuance of the final certificates and the patents. The question is not whether the person to whom the representation was made deemed it material, but whether it was in fact material. The rule is laid down in Vol. 14, Am. & Eng. Enc. of Law, page 59, as follows:

> "To constitute a fraud, the representations must be as to a material fact. With respect to this rule there is no conflict of opinion except sometimes in its application. A representation in relation to a fact that is not material to a contract, though it may be false, and known to be false by the person making it, and though it may be acted upon by the other party, is not fraud, either for the purpose of an action of deceit or for the purpose of rescinding a contract."

It is conceded by all parties that the statute under which the proofs in this case were taken and the patents issued, specially required as a condition precedent to the issuance of the patents, that the entrymen should have actually resided on the land three years. Therefore, proof that the entryman in any of the cases had resided on the land but one year, or one and one-half years, was immaterial because, if true, it would not justify or furnish to the officers any excuse for issuing

a final receipt, or the issuance of a patent; and it therefore became immaterial whether the representations made by the entrymen as to the time and character of their residence, and as to their intent to make the land their home, were true or false. Suppose the entryman had falsely represented to the Government officers that he had actually resided on the land but one month, and that based on such proof the Government has issued him a patent. Would that have been actionable deceit? And a residence of one year, or one and one-half years, would be of no more avail to him under the statute than a residence of one week or one month. And with this knowledge of the law, which the land officers were conclusively presumed to have, and this being admitted in the pleadings, it became a question for the court to determine whether or not the representations so made by the entrymen were material, and it required no proof on the part of either plaintiff or defendant where this state of facts were admitted in the pleadings.

Mr. Bigelow, in this work, "Bigelow on Fraud," at page 139, states:

> "Again, concerning the elements which go to make up a case of fraud, it is for the court, and not for the jury, to determine whether, e. g., an inducement held out by one party to another, which the latter professes to have acted upon, is material or not. . . . Gen-

erally speaking, it is also for the court to in terpret language of a perfectly plain nature unaffected by external facts such as the par ticular circumstances in which it is used. Whe so modified, it is for the jury to declare it meaning, but when, as we have just said, th language is plain and not subject to modifica tion aliunde, the case is for the court; an this is true in principle, whether the languag be written or oral. There is no question of th truth of this proposition when applied to writ ten language; and there should be none in re gard to an oral statement, for no further dis tinction can be drawn between the two cases.

And in determining this question the court wil not consider whether the party claiming to have been defrauded, deemed the representations mate rial, but whether or not they were in fact material

Thus the rule is stated in American and English Enc. of Law, Vol. 14, page 62, as follows:

> "It has been said that fraud is material to a contract if the contract would probably not have been made if the fraud had not been practiced. This, however, is not always true. If a representation is not material a person has no right to act upon it, and if he does, he is not entitled to relief or redress on the ground of fraud. The question is not whether the per son to whom the representation was made *deemed it material, but whether it was in fact material.*"

The alleged false representation in the case at bar consisted of a showing to the effect that the entrymen had resided on the lands for one to one and one-half years only. This showing was entirely in writing consisting of the final proofs of the entrymen. They are set forth in the answer and are admitted by the reply. Under the statute then in force, it was required that each entryman prove that he had actually resided on the land for three years, and there is no pretense that any one of the entrymen offered any such proof. Therefore, it was merely a case for the court to rule upon as a matter of law, whether the representations made by the entrymen as to the time of their residence were material or not. If they were not material, it ceased to be important whether they were true or false; and it is equally clear that the representations were not material, for had they been true, in every sense they would have afforded no excuse, justification or reason whatsoever for issuing the patents; and had the patents been issued, they would have been subject to cancellation by the Government.

The whole theory of the action for deceit is, that by a false representation the plaintiff was induced to act as he otherwise would not have acted because the false representation was of such a character that if true it furnished a reason or motive for his action. If the representation, being true, would

furnish no reason or justification for the action of the officers, then the plaintiff had no right to act on it or give any credence to it.

It is conceded that the entrymen in question were required to actually reside on their land three years. It is conceded that they made proof of residence of from one to one and one-half years only. It is alleged in the complaint that in point of fact their proofs were false, and that they did not reside on the land one or one and one-half years; and it is claimed that they only made occasional visits to the land. That was immaterial because the proof offered was immaterial. The Government was no more justified in issuing the patents on proof of one or one and one-half years' residence than it would have been justified in issuing the patents on proof of one day's residence. The Government officials were acting under positive law. It prescribed the terms and conditions upon which they could alienate the lands in question. They were not permitted to dispose of such lands on any terms other than those prescribed by the statute, and it follows that any representation of a situation or state of facts short of that which the law required before the patent should issue, could properly constitute no inducement to the officials to issue the patents.

In *First National Bank of Elkhart v. Osborne*, 48 N. E. 256, deceit was predicated on false repre-

sentation that a school warrant was "O. K." The law limited such warrants to the payment of expenses for school purposes, while the warrant in question showed on its face that it was issued for the purpose of a circulating library for the schools. The court, in passing on the question as to whether or not the representation was material, said:

> "We are unable to see in the facts before us sufficient grounds for holding him liable in an action for deceit. The appellant purchased the warrant as evidence of indebtedness of the school township, and not of Osborne. The warrant, upon its face, expressly and plainly indicated to the appellant and all others that it was void, and that the school township could not be held liable for the price or value of the property for which the warrant was given. The representation of Osborne, in his answer to the cashier's letter of inquiry, that the warrants were 'all O. K.,' related to them, not as his individual contracts, but as evidences of indebtedness of the school township; but his statements that as such evidences they were 'all O. K.', or all correct, or all right, *was a representation upon which the appellant had no right to rely*, it being bound to take notice of the contents of the warrants. It was stated in the special finding that the 'order was invalid when issued, which was then known by this defendant.' The court did not state upon what fact or facts it based the

statement that the order was invalid, but the facts stated in the finding showed the invalidity of the orders; and the trustee's knowledge of their invalidity, with his representation that they were 'all O. K,', would not render him liable for deceit to a purchaser who bought them with the knowledge of their invalidity shown upon their face."

So in the case at bar, the representations, even though false, were "representations upon which the plaintiff had no right to rely." It was bound to know the law and was bound to know that even though the representations were true the entrymen were not entitled to patents. Such being the facts, it was for the court to say that the representations were not actionable.

The case of *Fernaux v. Sydney Webb, et al.*, 33 Tex. App. 560, was one where the false representation consisted in inducing the plaintiff to surrender possession of certain leased lands. Defendants had leased a large ranch from one Morgan and had in turn sub-leased the ranch to the plaintiff. The lease to the plaintiff contained the provision, "subject to sale of the land." That manifestly and clearly meant, subject to sale of the land by the then owner thereof to some person other than the defendants. However, it was charged that the defendants had falsely represented to their lessee, the plaintiff, that they, the defendants, had purchased the land from Morgan, and thereby the

plaintiff was induced to surrender possession of the ranch to the defendants. He averred that as a matter of fact the defendants had not purchased the lands from Morgan and that the representations were false. The court held that it was immaterial whether the representations were false or not, because even if they had been true that fact would not have entitled the defendants to possession of the land, for the clear intent and meaning of the provision in the lease, "subject to sale of the land," was in case the land should be so sold as to place it beyond the control of the defendants. The court said:

> "The meaning of the contract was that appellants should hold under the sub-lease for the full period unless the owners should make such a sale of the lands as to put them beyond the control of Sydney Webb & Co. . . . and for this reason; that is, that a sale to Sydney Webb & Co. could not operate as a termination of the sub-lease to appellants, we think they, the appellants, mistook their legal rights when they voluntarily surrendered their lease and the lands and had no recourse upon the appellees. In other words, *the representations of appellees, to be actionable, must have been material, and such as had they been true, the appellants would have been justified in acting upon.*"

Now in this case, as in the one last above cited, the court said as a matter of law that the repre-

sentations were not material because, even if true, they would not afford any reason or justification for the plaintiff taking the action he did take. So we say here, even though the representations made by the entrymen of residence and cultivation had been absolutely true, it would not have justified or afforded any excuse for the Government to execute and deliver to them patents. Therefore the representations made were immaterial and it is not important whether they were true or false.

Russell, et al., v. Branham, et al., 8 Blackford, (Ind.) 304, was assumpsit for $1,000.00 on sale of a construction contract for a certain section of a canal. The defendants requested the court to instruct the jury "that if the plaintiffs had falsely represented to the defendants, for the purpose of inducing them to make the contract, that they had done the work on said section of the canal to the amount of $800.00 or $1,000.00, while the canal was under the charge of the state, for which they had not received payment, and that, on the final completion of the canal, they (the defendants) would get the pay for such work done, and had thereby induced the defendants to purchase said section, when in truth there was nothing due the plaintiffs for work done on said section and they had been paid in full for all work they had done on said section, they had a right to deduct such amount from the sum to be paid to the plaintiffs."

The lower court refused to give the instruction, and the Supreme Court, reviewing that action, said:

> "The second charge asked to be given by the jury was correctly refused. Had it been material to the defendants that the fact as to plaintiffs' claim for work alleged to have been misrepresented was true, the case might be different. But it was of no consequence to defendants whether such fact was true or false. Suppose the state had owed the plaintiffs for work done on the said section of the canal, the defendants could not, under the contract sold to them, have required the canal company to pay the debt. This is shown by the charter of the company. If, therefore, the plaintiffs informed the defendants that they would have a claim on the company for such a debt, it was only a misrepresentation of the legal effect of the contract sold, for which misrepresentation the plaintiffs were not responsible. It could not have deceived the defendants, as they must be presumed to have known the law."

Prince v. Overholser, 75 Wis. 646, was an action for fraudulent representations on sale of a land warrant. The defendant represented to the plaintiff that the warrant was good to locate on "homestead or mineral lands." The warrant on its face read, "The holder is entitled to locate 120 acres at any land office of the United States in one body and in conformity to the legal subdivisions of the

public lands, subject to sale for either the minimum or low-graduated price." The court said:

> "Here both parties had the same information and the means of knowledge of the use that could be made of the warrant, and there was no concealment of the statement on the face of the paper which showed on what lands it could be located. If the defendant did not know or understand it, it was his own fault and negligence."

The court referred in the decision last above mentioned to the case of *Slaughter's Adm. v. Gerson*, 12 Wall. 385. It is there said:

> "The doctrine substantially as we have stated it is laid down in numerous adjudications. Where the means of information are at hand and equally open to both parties, and no concealment is made or attempted, the language of the cases is, that the misrepresentation furnishes no ground for a court of equity to refuse to enforce the contract of the parties. The neglect of the purchaser to avail himself in all such cases of the means of information, either attributable to his indolence or credulity, takes from him all just claim for relief."

In both of these cases the court held as a matter of law that the representations were not material. We submit this must always be the case where there is no dispute respecting the relations of the parties, the character of the transaction,

and what was said or alleged to have been represented. Referring to the last two cases cited, and the doctrines thereof, and applying the same to the case at bar, we are at a loss to understand how it can be reasonably contended that it was not the duty of the court below to say as a matter of law that the representations under consideration were immaterial. The duty of Government, and of its representatives, was defined by statute. The representations alleged did not bring the entrymen within the statute, and hence afforded no ground upon which to predicate deceit, because had the alleged representations been true, the entrymen did not make the showing necessary to the issuance of patents.

Platt v. Scott, 6 Blackford 389 (Ind.), was a case where the plaintiff sued to recover on two promissory notes executed by the defendant to the plaintiff. The defense was that the notes were obtained by fraud. It appeared from the evidence that the notes were given in part consideration of a land warrant issued under an Act of Congress entitled, "An Act creating bounties of land and extra pay to certain Canadian volunteers." There was evidence tending to show that the plaintiff represented to the defendant before the purchase, and as an inducement to it, that the warrant could be located on any land belonging to the United States within the Indiana territory, etc. The rep-

resentation was in conformity with the Act of Congress of 1816 under which the warrant was issued, but the law had been changed by subsequent Act of Congress, which confined the location of warrants like that in question to lands of the United States within the State of Indiana. The court said:

> "*It is considered that every person is acquainted with the law*, both civil and criminal; and no one can, therefore, complain of the misrepresentations of another respecting it. In the case before us the defendant must be presumed to have known the laws relating to the location of the warrant in question; and he cannot, therefore, be permitted to say that he was misled by the representations which the plaintiff made as to what the law was on the subject."

It seems to us that this applies with full force to the case at bar. The representations here complained of can only be construed as representing, or saying to the officers of the Government, that the party had resided on land one year, or one and one-half years, and had performed certain military service, and hence he was entitled to a patent. The statute required three years' actual residence, and the officers of the Government are presumed to have known the law and to have known that one or one and one-half years' residence, together with the military service, did not entitle the entrymen, or any one of them, to a pat-

ent. Hence the representations were wholly immaterial, because, if true, they furnished no ground for the action which the Government took. It will not be contended that the officers of the Government were not presumed to know the law. How can the court harmonize that presumption with the contention that they were deceived by certain representations respecting the period of settlement, which, if true, would not bring the entrymen within the law?

An important case, and one throwing much light on the question under discussion, is that of *Robbins v. Hope*, 57 Cal. 496. At page 495 the court said:

> "The misrepresentation complained of was as to the title of the plaintiffs to the premises which they were induced to convey under the impression that they had no title thereto. And we understand the rule to be, as stated by the learned judge who sustained a demurrer to this complaint, that 'a person is conclusively presumed to know the state of his own title to real property. This is always the case where the party deals with a stranger, as in the present case.' No misrepresentation made by Hope or his agents, therefore, as to the proceedings in probate concerning plaintiff's title, or as to the state of their title in any respect, could have had the effect of misleading them."

It is well sometimes to go back to first principles, and we therefore call the attention of the court to the observations of Chancellor Kent in his Commentaries, Vol. 2, pages 484-5, 4th ed.:

> "The common law affords to everyone reasonable protection against fraud in dealings; but it does not go to the romantic length of giving indemnity against the consequences of indolence and folly, or a careless indifference to the ordinary and accessible means of information. It reconciles the claims of convenience with the duties of good faith to every extent compatible with the interests of commerce. This it does by requiring the purchaser to apply his attention to those particulars which may be supposed within the reach of his observation and judgment, and the vendor to communicate those particulars and defects which cannot be supposed to be immediately within the reach of such attention. If the purchaser be wanting in attention to those points where those would have been sufficient to protect him from surprise or imposition, the maxim 'caveat emptor' ought to apply."

In *Silver v. Frazier*, 85 Mass. 382, there was a count for falsely representing to plaintiff's agent the boundary of land for the purpose of inducing such agent to build a house at a point other than that at which plaintiff had directed such agent to build. It appeared that the principal had staked out the ground on which the building was to be

erected and instructed his agent to erect a building in conformity to the lines by the principal so located. The principal then left the country. The defendant told the agent thereafter that the lines located by the principal were wrong and that the boundary lines were different from those indicated by the principal, and thereupon the agent abandoned the lines located by his principal and acted upon the representation made by the defendant. The court said:

> "The other objection to the maintenance of the action is that the alleged loss or injury suffered by the plaintiff is not the direct and immediate result of the defendant's wrongful act. Stripped of its technical language, the declaration charges only that the agent employed by the plaintiff to do a certain piece of work disobeyed the orders of his principal and was induced to do so by the false statements of the defendant. In other words, the plaintiff alleges that the agent violated his duty and thereby did him an injury, and seeks to recover damages therefor by an action against a third person, on the ground that he induced the agent by false statements to go contrary to the orders of his principal. Such an action is, we believe, without precedent. The immediate cause of the injury and loss to the plaintiff is the breach of duty of his agent. This is the proximate cause of damage. The motives or inducements which operated to cause the agent to do an unauthorized act are too

remote to furnish a good ground of action to the plaintiff. The difficulty is not that there is want of privity between the parties. No such element is essential to enable the party injured to recover damages occasioned by a tort. It is sufficient in support of an action for deceit to show that the false statement was made with a knowledge that it was to be acted upon by the party injured, and that the act produced the damages, although the representation was made to an intermediate person. In such case the damage is the direct and immediate result of the fraud, but in the case at bar the damage which the plaintiff has sustained is only the remote and consequential result of the alleged false statement of the defendant."

At the utmost, all that can be contended in this case is that the agents of the plaintiff, the Government officials, disobeyed their instructions. The statute instructed them what to do and under what circumstances to alienate the land, and it would be no excuse for them to contend that they were induced by certain alleged false representations on the part of the settlers which were contrary to the instructions contained in the statute, and would not bring the entrymen within the statute at all, to issue the patents. The proximate cause of the plaintiff's loss was the carelessness and negligence of the agents of the Government, or their misconstruction and misunderstanding of the law rela-

tive to allowing the time of service of the ex-soldiers as a part of their time of settlement. They either assumed, without inquiring, that the land was not within the Siletz Indian Reservation, or they misconstrued the law touching the requirements precedent to the issuance of a patent to the lands within that reservation. In any case, the proximate cause of the plaintiff's loss was the disregard by the government officials of the plaintiff's instructions as set forth in the statute.

In *Missouri-Lincoln Trust Co. v. Third National Bank of St. Louis*, 133 Southwestern, 357, a railroad company drew its check on a bank in favor of one Parker. On the same day the check purporting to have been endorsed by Parker was presented to defendant by a third person and it issued to the order of Parker a draft on Chicago and delivered the draft to such third person who forged the name of Parker and obtained the proceeds of the draft. The draft went through several hands and finally was taken up by the drawee, who discovered the forged endorsement and called upon its immediate endorser to collect from the preceding endorser and pay it. The immediate endorser did so and paid the money over to the drawee. The preceding endorser then brought suit to recover from the drawee on the ground that it had been concealed from it that the drawee had paid and taken up the draft. The court said:

"Deceit, to be actionable, must be as to some material matter. The claimed deceit in this case is that defendant concealed from the plaintiff the fact, when it exacted repayment of the amount of the Chicago draft from it, that it had already paid the draft and had it in its possession. We are unable to see how this could possibly be concealment of a matter that at all affected the plaintiff. The presumption is that when the forgery was discovered, the draft then being in the hands of the defendant, turned in by the Chicago bank, defendant paid its amount back to the Chicago bank. Defendant was then entitled to resort to the next responsible party, and that was plaintiff. *Even if the defendant had told the plaintiff that it had itself taken up the Chicago draft and had paid it and had it in its possession, these facts would have been no defense to plaintiff as against repayment to either the Chicago bank or to respondent.* It was liable by reason of the fact that it was the one who had obtained payment of the Chicago draft on a forged endorsement. It had money to which it was not entitled. The fact that if it had known the defendant bank had done what it was bound to do,—that is, paid back to the Chicago bank the money with which it had been credited on account of this draft,—could not in any way discharge the plaintiff from its obligation to make good, which it incurred when it endorsed the draft."

In the case of *Hall v. Johnson,* cited by the Supreme Court of Michigan and reported in 2d N. W. at page 57, the court, speaking of the character of false representations necessary to be actionable, said:

> "False representations, no matter how acted upon, will not be sufficient to set aside an agreement otherwise valid unless they were material. Immaterial representations, either true or false, cannot be made the basis of relief, even though coupled with the assertion that they were relied upon. They may constitute a moral wrong, but not a legal one."

Motion for Non-Suit and for a Directed Verdict.

It was incumbent upon the Government to prove and show affirmatively the following facts:

First. That defendant Jones, with the intention of acquiring title in himself and persons associated and interested with him, and designing and intending to deceive the officers of the United States having authority relating to and over the public lands of the United States, and to defraud and cheat the United States out of the title, use and possession of its lands, caused the nine settlers named in the bill of complaint to file upon the land here in question.

Second. That defendant Jones, at the time of making the final proof by the settlers, knew that

the settlers had not complied with the law as to settlement, residence and cultivation.

Third. That Jones, so knowing this, induced and procured the settlers to give false testimony before the land officers in their final proof.

There was no evidence offered or received tending in any way to show that Jones had any other or different contract with the settlers than the written contract set forth on page 12 of the record, wherein the settler agrees as follows:

> *"The party of the first part further agrees to comply with the laws of the United States in regard to residence upon said lands taken up as a homestead."*

and there was no other arrangement or understanding, either express or implied, between the settler and Jones, that they were to do anything else than to comply with the law.

Defendant Jones, according to the contract, was to receive $185 for locating the settler, preparing his papers and affidavits necessary in making his filing. He was to receive $100 for the building of a dwelling house, and $175 for the clearing and cultivation of the land, and, if required by the settler, to advance the amount of fees required at the Land Office and all necessary expenses of the settler, not exceeding the sum of $60. And Jones further agreed that after final proof he would, at the option of the settler, procure a loan on said land not to ex-

ceed the sum of $720, to be secured by a mortgage on said claim.

This contract was not an unlawful one, and was one which has been upheld by the courts of the United States, as said by Mr. Justice Adams of the Court of Appeals in the case of *Conway v. United States*, 95 Fed., page 615, on page 618 of the opinion:

> "It is further alleged that Boyington was unable, by reason of his age and poverty, to do the necessary clearing, and for that reason made a contract with Conway to clear the same; agreeing to give him the timber to be cut from said land, provided Conway would erect a frame dwelling house and other buildings thereon for Boyington, break such portions of the land as could be cultivated, furnish Boyington money for the purchase of the requisite stock to outfit his farm, and furnish Boyington with provisions sufficient to keep him and his hired man, to the extent, all told, of the value of $800. . . . If these averments are true,—and we must so treat them for the purposes of this case,—and if the defendant was engaged in doing the work of clearing in good faith, for the purpose of preparing the land for cultivation, then, even though the settler was to receive in money the value of the timber so cut, the act would be justifiable, under the law, and the person employed to do it would not be liable to the United States therefor." See also *Grubbs v. U. S.*, 105 Fed., pages 314, 319.

And it will not be disputed that after final proof the homestead claimant may, before patent issues, contract or be contracted with, or sell or convey as though patent had issued; and he may mortgage the homestead even prior to that time, without being guilty of alienation.

Williamson v. U. S., 207 U. S. 425-452.

U. S. v. Biggs, 211 U. S. 507-553.

Jones did not require or request any of the settlers to convey the land to him, or to agree to convey it to him.

Mr. J. L. Wells was a witness called by the Government and held out to the jury and to the court as one who was entitled to full credence, and who was also one of the nine settlers on the lands in controversy. On page 207 of the Transcript he was propounded the following questions by the District Attorney:

"Q. And what were they (the settlers) to do with the land after they got title?

A. If I understand it correctly, it is this in regard to the mortgage. It made no difference whether it was a man or a woman that gave the mortgage for the improvement of the land and the filings and everything that cost—the costs and the money they got—if they would take up that mortgage and pay the mortgage off they could keep the land, the land was theirs. I could have kept my land. Mr. Jones never asked me to deed the land over if I

would pay my mortgage off. And I understand that was the understanding with all of them."

And on cross-examination, on page 244, the same witness testified:

"Q. But at any time during this year, or at the time you gave the mortgage, you were at perfect liberty, so far as any arrangement you had with Mr. Jones, to sell this land to any person you saw fit? Is that correct?

A. That was correct; yes.

Q. And the purchaser would have to pay back to Mr. Jones—to be taken subject to the mortgage—the purchaser would have to pay back to Mr. Jones what he had advanced on the land?

A. I presume that was the way, yes. I presume that was the way, yes.

Q. Unless you had made a cash sale?

A. Yes."

And again on page 248, the same witness:

"Q. But there was no agreement or arrangement that any deed was to pass upon the payment of that $200, was there?

A. No, there was no agreement."

And on pages 249 and 250 the same witness, on examination by the court, testified:

"Q. Mr. Wells, did you give a mortgage in your case?

A. I think I did. If I remember right, I gave a mortgage to Mr. Jones.

Q. How long after giving that mortgage, then, did you deed this land to Mr. Jones?

A. Well, I just can't tell. It must have been a year—it must have been.

Q. Well, did you understand when you gave the mortgage that you were finally to deed that to Mr. Jones?

A. I had the privilege of paying that mortgage off and holding the land, or I could deed the land to him if I seen I could not lift the mortgage.

Q. Well, you could have deeded the land to anyone else, could you?

A. Oh, yes; I could have deeded the land to anybody else."

Mr. Thad S. Potter, called as a witness on behalf of the Government, on page 345 of the Transcript, testified in answer to the question of the District Attorney:

"Q. Would you say that the purpose of entering into these contracts was to secure finally the land for the benefit of Mr. Jones?

A. My understanding of the purpose of the contracts was, or the purpose of the whole scheme was to make money out of it—to make some money out of it, as a locating proposition—but I didn't understand that there was any agreement for Jones to secure the title to the land."

Mr. Oliver I. Connor, a witness called on behalf of the Government, and one of the nine settlers, testified, page 374 of the Transcript, on cross-examination:

"Q. Now that is all there was to your contract, wasn't it? You were under no obligation to sell the land to him, were you?

A. No.

Q. And you didn't sell it to him? I say, you didn't sell the land to Mr. Jones?

A. No. He never wanted to buy it—never said anything about buying it.

Q. And you sold it to somebody else?

A. Yes.

Q. And you got your money from the other fellow?

A. Yes.

Q. And paid Mr. Jones off? The man that bought the land paid Jones off and gave you the additional money?

A. Yes.

Q. So that ultimately the fellow that got the land paid all of these things, because he paid Jones? That is right, isn't it?

A. Yes."

B. S. Hunter, one of the nine claimants, called as a witness on behalf of the Government, on page 410 of the Transcript testified:

"Q. What were the people who were putting

up the money going to get for doing this service for you?

A. There was nothing ever said to me about money, in regard to the expense, or what I was to get, or anything at all about it till after we had been out there.

Q. After you had been out where?

A. Out to Toledo.

Q. And what was said to you at that time?

A. Well, I don't remember just what might have been said. Of course I got the impression that if I got the place, why, if I wanted to sell it I could sell it. If I didn't want to sell it I could keep it."

The same witness on cross-examination, page 434, referring to the time of making of final proof at Oregon City, the following question was propounded:

"Q. Was there anything said to you at that time by Mr. Jones as to what you were going to do with your land?

A. Not that I know of.

Q. He didn't ask you whether you were figuring on farming it?

A. I don't think he asked me anything at all about it."

Mr. Louis Paquet, a witness called on behalf of the Government (but not one of the nine claimants), who had taken up a homestead under similar circumstances and which entry had been an-

celled, testified (pages 494-495) on direct examination:

"Q. Then you went to Oregon City and made your final proof?

A. Yes.

Q. And after that you went to Mr. Jones and offered to sell him your interest in this land?

A. Yes, sir, I went and offered to sell him myself.

Q. He didn't come to you and ask you to buy?

A. No, sir. He didnt' care much about buying it at that time."

Mr. M. J. Morse, called as a witness on behlf of the Government, who was also a settler but whose entry was cancelled, testified (page 517 of Transcript):

"Q. Now, did you have any other arrangement or agreement with Mr. Jones other than the one that you have referred to (the written agreement)?

A. I did not.

Q. Was there any agreement or understanding between you and Mr. Jones prior to the time of making final proof that you would deed the land to him?

A. No."

George Rilea, also called as a witness on behalf of the Government, who took up a claim under the same circumstances as the preceding witness, after testifying that he had given a mortgage for $200,

and that Mr. Jones had paid him $200, the following question was asked (page 530 of Transcript):

"Q. What did he give you the $200 for?

A. Why, it was a loan.

Q. Did you expect to pay it back?

A. Yes, sir. I expected to pay it back if I could. If I couldn't, why, I was going—

Q. If you couldn't do what?

A. If I couldn't pay it, I was going to sell the land and pay it that way.

Q. Sell the land?

A. Yes.

Q. Sell to whom?

A. Anybody."

He further testified (page 534), when asked if there was anything said at the time of his giving the mortgage, about selling the land. He made the following statement:

"A. Why, when he went to make out the mortgage, Potter asked him how long he would make it out for, and he said 'six months'; and I says, 'Mr. Jones,' I says, 'you wouldn't call that a loan, would you?' I says, 'I couldn't pay it in six months.' 'Well,' he says, 'how long a time do you want on it?' I says, 'at least a year, and that without any interest.' He turned around to Potter and said, 'Make it out that way.' And Jones says to me then, he says, 'You calculate to sell yours, do you?' I says,

'I will if I can't pay for it any other way.' 'All right,' he says, 'all I want is my money.' "

G. C. Lawrence, a witness called who had taken a homestead under the same circumstances as the former witness (page 556 of Transcript), testified:

"Q. What was said by him (Jones) when he paid you the $200 as to what he was paying you the money for?

A. Well, it was something like this, as I understood it, that this was a loan and I had the opportunity of redeeming it by either selling it, or do what I pleased with it; but I would raise this mortgage by paying, if I remember right, $720. That is what it would amount to. Of course, if I didn't, naturally he would foreclose the mortgage of course."

And we say without fear of successful contradiction that there is no testimony in the record from any source, that defendant Jones at any time had any intention of securing title to these lands. It is true that he did secure title to four of the tracts only, but that was after patent had issued, and was at the solicitation, as the testimony shows, of the settlers themselves.

It is not claimed that defendant Jones had any direct knowledge that these settlers were not continuously residing on the land and were not making it their home as required by the statute. It is

not claimed that Mr. Jones was ever over in the country where the claims were located during the time of alleged settlement and cultivation. But it is sought to charge Jones with notice of the acts of the settlers, through the witness Potter, and J. L. Wells. Mr. Potter had acted as the attorney for Mr. Jones in drawing up the contract, and also, at the time of final proof, in seeing that the proofs were properly and regularly made. But it is not claimed on behalf of the Government that Mr. Potter had any personal knowledge of the character of the residence of these settlers. In fact, he testifies that he did not have such knowledge. It is, therefore, attempted to charge Mr. Jones solely with the knowledge of the manner in which these settlers resided upon their land, through J. L. Wells, whom the Government claims was the agent of Jones, and therefore knowledge of the agent would be knowledge of the principal. Defendant contends that Mr. Wells had but one employment so far as Mr. Jones was concerned, and that was the procuring of soldiers and soldiers' widows to sign the contract and take up a homestead in the Siletz, and they to comply with the laws of the United States; and that Wells had no authority to bind Jones in any other matter. Jones was to pay Wells $5 for each old soldier who had a homestead right that he would bring to him, who would sign up the contract with Jones. This is borne out by the testimony of Mr. Wells, a witness for the

Government. On page 161 of Record, witness Wells, upon direct examination, testified:

"Q. What, if anything, did you tell these entrymen as to what they were to do after they got their title to the land?" which was objected to, and the court asked the following questions:

Court: "Q. Did Jones tell you that?

A. No.

Q. You were not engaged?

A. No, I was not. No.

Q. Well, did Jones instruct you about taking these men?

A. No, he didn't. I was to take them to him. They were to go to Mr. Jones for instruction.

Q. Well, were you then requested by him to find these men?

A. That is all.

Q. And you were to take them then to him?

A. I was to take them to him or send them there. I didn't have to go to him, but I was to send them.

Q. You were not instructed to give any instructions to these men about what they should do in getting this property?

A. No instructions at all from me."

And the same witness, on cross-examination (page 231 of Record) testified:

"Q. You were to have, as you testified, $5 for each old soldier that you produced that would

enter into a contract and take up a quarter section?

A. Yes, sir.

Q. Now, you had no other duties to perform except that, under your agreement with Mr. Jones, did you?

A. That is all I had. That is all that he desired.

Q. That is all that you were to do?

A. That is all.

Q. And all you were authorized to do so far as Mr. Jones was concerned?

A. That is all."

And the same witness, when called as a witness for the defendant, testified (page 881 of Transcript):

"Q. Now, Mr. Wells, I will ask you whether or not you had any authority to act for Mr. Jones for any other purpose than securing the names of these old soldiers and getting them to sign the contract?

A. I had not. I had no authority whatever.

Q. And that was the limit and extent of your authority from Mr. Jones?

A. Yes, sir."

Defendant Jones, testifying on this point (page 910 of Transcript), testified:

"Q. What is the fact as to whether or not the contracts were uniform, whether they were all the same?

A. The contracts were all the same. There

wasn't a variation in any of the contracts. Whatever one signed they all signed.

Q. And what authority did Mr. Wells have from you to act in the matter?

A. Mr. Wells was authorized to act as my agent in securing names to these contracts.

Q. Did he have any other authority?

A. He had no other authority; after procuring these names and bringing in these signed contracts his authority from me ceased."

And the same witness (page 915 of Transcript) testified:

"Q. Did you authorize Mr. Wells or anyone else to make any representations to Mr. Gillis or to any of these entrymen that you were willing to buy the land or to do anything aside of what was contained in the written contract?

A. I never authorized Mr. Wells to make any statement, anything at all, except what was in the contract. The terms of that contract was what we were entering into and there was nothing outside of that. He was never authorized to make any statement outside of that contract."

Mr. Wells, if he was an agent at all, was a special agent employed for a special purpose, and in this case both principal and agent testified positively that the agent had no authority to bind Mr. Jones outside of what he was especially employed to do. Therefore, notice to Wells in other matters

disconnected with his employment could not be deemed to be notice to Mr. Jones. Therefore, it must be conceded that Jones had no notice or knowledge that these settlers had not complied with the law and were not entitled to final certificate.

And there is no testimony to support the allegation of the complaint that it was the intention and purpose of Jones and said entrymen to retain the then places of residence of said entrymen, or that it was not intended by the said Jones or any of said entrymen to reside upon or make their home upon said land before the issuance of patent thereto.

It is further alleged that it was wrongfully and fraudulently intended and designed by Jones that each of said entrymen should make false proof before the officers of the United States having authority relating to and over the public lands, and that Jones knowingly induced and procured each of said entrymen to make false and fraudulent proof. This allegation is refuted by the testimony of the Government witnesses, being the settlers themselves.

I call the attention of the court to the testimony of J. L. Wells on direct examination (page 190 of Transcript), referring to the time of making final proof at Oregon City:

"Q. And was Mr. Potter present when the questions were propounded to you?

A. I think he was. He was in—

Q. Did you discuss with him concerning the nature of the answers to be given?

A. No, I didn't.

Q. Had you previously discussed it with him?

A. No.

Q. You proved up on your claim, did you, Mr. Wells?

A. I did, yes. I rather commuted it."

And the same witness, on cross-examination (page 248 of Transcript), testified:

"Q. Now, there is one other thing I wanted to ask you about, with permission of the court, which I overlooked. That is, at the time of making your final proof there was no one suggested to you, or to any of these soldiers, so far as you know, what their answers should be to any of these questions, was there?

A. Not to me, there was not.

Q. Was there to any of them that you know of?

A. Not that I know of. At least I have never heard anyone say anything about it.

Q. Neither by Mr. Potter or Mr. Jones or anyone else that you know of?

A. No, no.

Q. The old soldiers would not have permitted that? You would not have permitted it, you would not have permitted it, would you?

A. I don't think I would.

Q. To tell you what you should testify to?

A. I think not."

Mr. Thad S. Potter, a witness called on behalf of the Government, when he was testifying regarding the final proof made at the Land Office (page 281 of Transcript), testified as follows:

"Q. Who prepared these answers to the questions?

A. What questions?

Q. To the questions propounded in the testimony of the claimant in making proof?

A. The Register and Receiver.

Q. I am asking who furnished the answers to any of the questions?

A. The witness, whoever he was.

Q. You were present when the answers were written?

A. I don't know that I was standing right by. I was in the room or in the neighborhood.

Q. Did you discuss with the entrymen what answers were to be given?

A. No."

On cross-examination the same witness testified (page 285 of Transcript):

"Q. Did you, at any time, suggest any of the answers made by the entrymen in their final proofs?

A. No.

Q. Do you know anyone who did?

A. No."

And the same witness, on cross-examination (page 338 of Transcript), testified:

"Q. Did Mr. Jones ever suggest to you that you should interfere with them or cause any of these settlers to vary from the law in any way?

A. No, sir.

Q. Now, I think you have testified, Mr. Potter, that you in no way suggested to the claimants the answers they should make to the questions to be propounded to them by the Land Office?

A. No, sir; I did not.

Q. I will ask you whether or not Mr. Jones ever suggested to you or requested that you should do that?

A. No, sir; he never did."

Mr. B. S. Hunter, a witness called on behalf of the Government, and one of the nine claimants, testified (page 433 of Transcript), on this point:

"Q. In reference to this final proof that you made at Oregon City, did you have any lawyer there acting for you?

A. No, sir.

Q. Anybody help you fill out your statement?

A. No, sir.

Q. Anybody ask you about the statement so they could have it typewritten?

A. Nobody asked me anything at all about it.

Q. Did you know Mr. Potter then?

A. No.

Q. Was he there, do you recall?

A. I don't know whether he was or not.

Q. If he was you don't remember talking to him about your final proof?

A. No. No, I didn't talk to anybody, I don't think."

Mr. G. C. Lawrence, a witness on behalf of the Government, testified regarding making his final proof at Oregon City (page 555 of Transcript) as follows:

"Q. Did you know what questions were to be asked you when you made final proof?

A. I did not.

Q. Was anything said to you about the questions to be asked?

A. No. No, sir.

Q. Was anything said about the answers to be given? Did you discuss it over with anyone?

A. Well, I don't know as there was. I couldn't say positive about that. I don't think there was."

Mr. George J. West, a witness called on behalf of the Government, testifying in regard to making final proof (page 613 of Transcript), testified:

"Q. Who went with you when you made your final proof?

A. Well, I went with a bunch more, a bunch of others and Mr. Wells.

Q. You went with Mr. Wells?

A. Yes, sir.

Q. What, if anything, was said about the questions that would be asked you and the answers you should give?

A. I don't remember that."

Therefore, the Government wholly failed to prove that Jones had any other or different contract or arrangement with the proposed settlers than the written agreement that he had with them that is set out in the complaint. The Government sought to prove a secret agreement between Jones and the settlers and to show that the written agreement was a mere blind to conceal the real intent and design of Jones. In this it failed absolutely. It did not produce a witness, or any testimony, or even attempt to establish this fact. Neither did it prove that Mr. Jones had any knowledge or notice that these settlers were not complying with the requirements of the Land Office of the United States in regard to the *bona fides* of the settlement and the proper residence required by law; nor that he, having such knowledge, procured the settlers, or any of their witnesses, to make any false testimony or suggestion in any way that they give any testimony in regard to their claims that was false and untrue.

Fraud is never presumed, and where it is alleged, the facts sustaining it must be clearly made out. Mr. Chief Justice Fuller, in the case of

Farrar v. Churchill, 135 U. S., page 609, on page 615 of the opinion, lays down the rule as follows:

> "The general principles applicable to cases of fraudulent representation are well settled. Fraud is never presumed; and where it is alleged, the facts sustaining it must be clearly made out. The representation must be in regard to a material fact, must be false and must be acted upon by the other party in ignorance of its falsity and with a reasonable belief that it is true. It must be the very ground on which the transaction took place, although it is not necessary that it should have been the sole cause, if it were proximate, immediate and material."

Mr. Justice LaMar, in the case of *Southern Development Co. v. Silva*, 125 U. S., on page 249 of the opinion, says:

> "The burden of proof is on the complainant; and unless he brings evidence sufficient to overcome the natural presumption of fair dealing and honesty, a court of equity will not be justified in setting aside a contract on the ground of fraudulent representation. In order to establish a charge of this character, the complainant must show by clear and decisive proof—first, that the defendant has made a representation in regard to a material fact; secondly, that such representation is false; thirdly, that such representation was not actually believed by the defendant on reasonable grounds to be true; fourthly, that it was

made with an intent that it should be acted upon; fifthly, that it was acted on by the complainant to his damage; and, sixthly, that in so acting upon it the complainant was ignorant of its falsity and reasonably believed it to be true."

In the case of *King v. Lamborn*, 186 Fed. 21, Mr. Justice Wolverton, speaking for the Court of Appeals of the Ninth Circuit, on page 27 of the opinion, says:

"Fraud is never presumed; and, where it is sought to recover on account of imposition through alleged fraud and deceit, the facts sustaining the charge should be clearly and satisfactorily established. This is true wherever it is sought to be shown, whether in an action at law or a suit in equity. If misrepresentations are made to form the basis of relief, they must be shown to have been predicated of a material fact, and to be in truth what they are alleged to be. Furthermore, the party complaining must have relied and acted upon them either implicitly, or in the reasonable belief of the truth of what they purport to assert, and, of course, they must constitute the very ground on which the transaction took place, being proximate, immediate and material."

Plaintiff failed to prove any of the material allegations of its complaint; it failed to prove that any fraud or deceit or misrepresentation was practiced by defendant Jones; it offered no testimony

and failed to prove whether or not the inducing causes for the issuance of the patents were the misrepresentations made by the settlers at the procurement of Jones, and failed to prove that the United States relied upon the representations and was deceived, and failed to prove that the defendant intentionally did the wrongs charged against him in the complaint. Although the Register of the Land Office, C. B. Moores, was placed upon the witness stand by defendant, he was not asked by the Government as to what the inducing cause was for the issuance of the final certificates. It was also shown in the testimony that the Receiver of the Land Office was also within easy call, but he was not placed upon the witness stand by the Government, and the presumption is that the testimony, if given, by these witnesses, would have been adverse to the Government.

These were the things laid down by Mr. Justice Hunt in the case of *United States v. Jones*, C. C. A., 242 Fed., page 609, and on page 615 Mr. Justice Hunt says:

> "Our conclusion is, therefore, that whether the alleged fraud and deceit and misrepresentation was practiced, and whether they were the inducing causes for the issuance of the patent, and whether the United States relied upon the representations and was deceived, and whether the defendant intentionally did the wrongs charged against him, in-

volves issues of fact to be decided upon a consideration of the evidence, as well as the law."

But the Government wholly failed to meet any of the requirements thus laid down, and the jury were asked to find a verdict upon conjecture, that defendant had some other secret agreement with the settlers than the written agreement set forth in the complaint; that defendant induced the settlers to file upon the lands with intent of gaining title thereto for himself; that at the time of the making of the final proofs he knew that they had not complied with the law as to residence and cultivation; that he induced the settlers to give false testimony in their final proofs before the land officers of the United States. There was no competent proof of any of these allegations, and nothing but conjecture on the part of the jury that defendant had been guilty of any fraud against the United States. And conjecture is insufficient to support a verdict. Mr. Justice Sanborn, in the case of *Bolen-Darnall Coal Co. v. Hicks*, sitting in the Court of Appeals, reported in 190 Fed., page 720, on page 721 of the opinion says:

"Plaintiff below alleged, and the burden was upon him to establish by substantial evidence that the proximate cause of the accident he sustained was the location of the powder on the opposite side of the entry from the rooms in which he fired the shots. In the course of the trial, there was evidence suffi-

cient to sustain the finding that the accident was caused by his firing of conflicting shots at the same time which produced a windy shot and an explosion, or that it was caused by his firing two shots in each of two rooms in violation of the rule of the company never to fire shots in more than one place at a time, but there was no substantial evidence, there was nothing in this case but conjecture, to sustain a verdict that the explosion was caused by the location of the keg of powder, and juries may not transfer property from one citizen to another by guess. The case falls under the decision of the Supreme Court in *Patton v. Texas and Pacific Ry. Co.*, 179 U. S., 658, 663, in which Mr. Justice Brewer said that where an employee charges his employer with causitive negligence:

'It is not sufficient for the employee to show that the employer may have been guilty of negligence. The evidence must point to the fact that he was, and where the testimony leaves the matter uncertain and shows that one of half a dozen things may have brought about the injury for some of which the employer is responsible and for some of which he is not, it is not for the jury to guess between these half dozen causes and find that the negligence of the employer was the real cause when there is no satisfactory foundation in the testimony for that conclusion.'"

And in the same court, in the case of *Midland Valley R. Co. v. Fulgham,* 181 Fed., page 91, on page 95 of the opinion, Mr. Justice Sanborn says:

> "Conjecture is an unsound and unjust foundation for a verdict. Juries may not legally guess the money or property of one litigant to another. Substantial evidence of the facts which constitute the cause of action in this case of the alleged defect in the lift pin lever and the coupler is indispensable to the maintenance of a verdict sustaining it." Citing *Missouri K. & T. R. R. Co. v. Foreman,* C. C. A., 174 Fed. 377; *Kern v. Snyder,* C. C. A., 145 Fed. 327-329; *Spencer v. Ry. Co.,* 105 Wis. 311-313; *Thomas v. Railroad Co.,* 148 Pa. 180; *Hyer v. Janesville,* 101 Wis. 371-376.

Errors in Admission of Evidence.

Plaintiff offered in evidence, over the objection of defendant, a form of contract purported to have been entered into between defendant Jones and the widows of deceased soldiers (see Bill of Exceptions, page 76 of Record), which was admitted by the court, and the court also received testimony of witnesses to the effect that defendant had procured widows to file on lands in the Siletz Indian Reservation without settlement. We will not take up each of these widow's cases separately, but will discuss them collectively. We claim that the admission of this class of testimony was erroneous and prejudicial to defendant. It introduced an

element into this case about which the defendant had no notice, and for which he was wholly unprepared. It threw no light upon the issues to be tried, and had the effect of impressing the jury with the idea that Jones was committing wholesale frauds against the United States, and, while defendant gave a lucid and clear explanation of how he came to solicit widows to file, nevertheless, the damage had been done and, as has often been said, "You cannot unring a bell or unscramble an egg." It will be remembered that Mr. Jones testified (page 900 of Record) that when he was coming out to the Pacific Coast in 1889 he saw a circular issued by the Northern Pacific Railroad Company, setting forth the rights of settlers to take land, and, among other things, setting forth that soldiers' widows might take a homestead and make proof without any residence or settlement; and that in the year of 1892 his mother came out to visit him, and, his father having served through the Civil War, he bought a relinquishment of a homestead in the State of Washington and went to the Land Office and made inquiry of the Register in regard to the law and was assured by him that no residence was required; that his mother made entry on this land and after the proper period had elapsed final proof was made. No proof of residence was required; and the proof of cultivation was done—the cultivation was done, which they had hired other

parties to do. Upon this the Government issued a patent to Mrs. Jones.

Then, when the Siletz lands were thrown open, Mr. Jones, believing that this was a lawful means of acquiring title to Government lands by widows of ex-soldiers, applied to Mr. John L. Wells to procure widows to take homesteads in the Siletz Indian Reservation. He consulted an attorney, had a contract drawn, and located a number of these widows in the Siletz. None, however, went to patent, for the reason that while the Government officials held that residence was not necessary, the widows must identify themselves with the land; and they not having shown any evidence of having identified themselves with the land, the patents were cancelled. This brought on, through the suggestion of Mr. John L. Wells, the ex-soldiers, and a new contract was made which was submitted to the Special Agent of the General Land Office, also to the Register and Receiver, to the United States Attorney, and to the Secretary of the Interior (see pages 902-903 of Record) as to the legality and validity of such contract. These actions on the part of Mr. Jones did not indicate fraud, but rather, strongly indicate a desire to comply with the law.

Plaintiff also, over the objection of the defendant, introduced in evidence the filings, final proofs and oral testimony of a large number of other ex-soldiers who had contracted with Jones in the same

manner and form as had the nine settlers whose claims went to patent and which are in controversy here. This testimony threw no new light upon the case, proved nothing against Jones, and tended only to confuse and prejudice the jury. It was not disputed upon the trial, nor in the pleadings, by Mr. Jones, that he had located these men upon the Siletz Indian lands. It was not disputed that he had advanced them money for their filing fees, built their cabins and cleared their land, and loaned them money after the issuance of their final receipts. But it was disputed that this was done with a fraudulent intent as to any of these settlers. And none of the settlers who were placed upon the witness stand, in any way by their testimony, charged Mr. Jones with any fraud, or with any attempt to corrupt them, in any manner whatsoever.

Plaintiff called as a witness Mr. Robert A. Miller, an attorney (page 93 of Record), and attempted to prove by him conversations that he had with defendant Jones regarding contests on other claims than the nine claims set forth in the pleadings. And it appears from the testimony that contests had been filed against some of these other claims and witness testified (page 96) that he met Jones in the hallway and after some conversation Jones made an offer of compromising the cases, with the statement that some of his clients, or someone, had loaned money on these claims and he

had to protect them by seeing that the claims went to patent, and that his recollection was that Jones offered $200 to compromise each claim, which was accepted. This not only did not relate to the claims in issue, but was at a time after all of the acts with which Jones had been charged in the complaint had taken place, and did not tend in any way to prove any of the issues set forth in the complaint, but was prejudicial to the defendant.

Plaintiff, in order to prove the value of the nine claims in question, called Mr. Malcolm Dobie as a witness (page 96 of Record) and asked him the following questions:

"Q. Are you familiar with what timber buys and sells for in the Siletz Reservation?

A. No, sir; I was never down there.

Q. You know the value of the timber in 1900 and 1902?

A. I know what the company paid for timber at that time.

Q. Where?

A. In 8-8 and 8-9 (meaning in Twp. 8 S., R. 8 W., and Twp. 8 S., R. 9 W.), at the head of the Siletz (page 431 of Testimony).

Q. The land here in Twp. 10?

A. I never was in 10."

With this qualification as an expert, the witness was permitted to testify as to the value of land that he knew nothing about, had never seen, knew noth-

ing of sales even in that township, and based his knowledge of the values upon what he had seen in the newspapers and what the company for which he was employed had paid for lands in another township. This was clearly error. The rule is well established that sales of property, even in the vicinity of the property whose value is sought to be ascertained, are not a proper measure of value. The proper measure of value is what the land is reasonably worth; what it will sell for in the community where it is located, by a person who is not obliged to sell, to a person who is not obliged to buy. And the value of property cannot be fixed from hearsay, or from newspaper articles.

Mr. David Edgar, also called as a witness on the same subject (page 100 of Record), was permitted, over the objection of the defendant, to testify as to what prices he had heard of some timber being sold for in townships other than the ones in which the lands in controversy were located. He testified that he did not know the price of timber, or of stumpage; did not know what it was being bought and sold for at that time; in fact, did not show any qualification whatsoever to enable him to testify as to the value of the lands in question.

Mr. W. S. Stennick (page 102 of Record), testified that he did not know what timber was buying and selling for in the Siletz country in 1902; that he was not buying or selling, and all that he knew

about it was from hearsay. But on this showing he was allowed to testify that the lands were worth $1,000 a claim.

R. H. Howell, called as a witness (page 104 of Record), was asked the following questions:

"Q. Do you know what the timber land in the Siletz Reservation was being bought and sold for in 1902?

A. Well, it would only be hearsay.

Q. Well, that is all we ask for.

A. Yes.

Q. Now, what was a claim of 160 acres, a quarter section of timber land, in the Siletz Reservation, being bought and sold for in 1902?"

Witness answered:

"A. Anything up to about $1,000 or $1,200.

It must be remembered that the Siletz Indian Reservation is a large tract of land, being about ..... miles in length and approximately ..... miles in width, and is located in the Coast Range Mountains, and therefore, mountainous, rough and in many parts inaccessible, is largely covered with timber, the value of which varies according to its accessibility and quality, and for a witness to be allowed to testify to sales of timber lands anywhere within that large reservation in not the immediate vicinity of the lands in question, and from hearsay only, was prejudicial to defendants and

did not advise the jury of the real market value of the lands in question.

We have been unable to find any decisions upholding testimony of this character. In some jurisdictions, evidence of sales of land of like quality in the immediate neighborhood are permitted, while other courts refuse to allow testimony of this character. Among the latter, California, Iowa, Kansas, Minnesota, Nebraska, New York, Ohio, and Pennsylvania. In the case of *Neely v. Western Allegheny R. R. Co.*, 219 Pa. St. 349, 68 Atl. 829, the court in stating the rule and discussing the reasoning on which it is based, said:

> "It is well settled by an unbroken line of decisions that the test of value in such a case is not the price paid for a particular property but the general selling price of land in the vicinity, and that evidence of particular sales is not admissible to establish market value. The reason for the rule is that particular sales may have been made without regard to the market value and that separate inquiries as to them and a comparison of the properties sold with the property in question and with each other would introduce collateral issues and tend to confuse rather than enlighten the jury."

citing *Pittsburg Etc. R. Co. v. Patterson*, 107 Pa. St. 461.

And in *Kansas City Etc. R. C. v. Weidenmann*, 77 Kans. 300, 94 Pac. 146, the court says:

> "No error was committed in excluding tes-

timony of particular sales proposed to be given on direct examination of defendant's witnesses. The general selling price in the neighborhood is one of the tests of value, while the price paid for a particular property may have been a sacrifice from necessity, the result of trickery or fraud, or of recklessness and folly. The dissimilarity in properties makes comparison difficult and impracticable; besides, such a rule would introduce as many collateral issues as there were sales, thus making inquiry almost interminable."

This question has not been directly passed on by this court; the nearest approach is the case of *Kerr v. South Park Commissioners*, reported in 117 U. S., page 379, where this court held that it was not competent in fixing the value of lands taken for park purposes, to show the prices at which sales had been made of lands immediately adjoining the proposed park, and which sales were made after the exterior lines of the park had been determined.

Refusal of Court to Give Instructions to Jury Requested by Defendant.

A number of the instructions requested by defendant and refused by the court are set forth in the bill of exceptions. We will not discuss them separately, for the reason that many of them have already been covered in this brief on the argument relative to the introduction of any testimony in the

case, and to the motion for non-suit, and for a directed verdict. But we particularly desire to call the attention of your Honor to an instruction appearing in the bill of exceptions (page 112 of Record), as follows:

> "Intent is vital in this cause. If the nine entrymen who filed on the nine claims in question honestly believed they knew what were the requirements of the homestead law, and if these entrymen acquired what they believed to be correct information as to the requirements of the homestead law prior to meeting Jones or entering into the plan complained of, or secured such information independent of Jones, then if these entrymen honestly believed they were complying with the law, then Jones cannot be held responsible for an act of these entrymen based upon a mistaken idea of the law.
>
> If Jones should have honestly given a mistaken interpretation of the law, he could not be held responsible because the wrongful intent would be absent."

This instruction was refused by the court. It should have been given, for the reason that the action of these old soldiers, in order to support the allegations in the complaint, must have been intentionally wrong and fraudulent. If they were acting under an honest mistake of the law; if they were complying with the law as they interpreted it, they were not endeavoring to deceive the Government. It cannot be supposed that some 24 or 25

of these ex-soldiers, who had gone out in 1861 and risked their lives to preserve the Union, were frauds, or were dishonest, or were in any way attempting to defraud that Government which they had fought to preserve. And there is no record, and no instance, where any of the old soldiers turned down the proposition upon the ground that it wasn't straight and honest. But their impressions as to the homestead law and the required residence and cultivation, arose solely from the lax and loose methods in which the homestead laws had been heretofore enforced in the West. Nearly every one of these old soldiers testified concerning his belief in regard to the homestead law as to settlement and cultivation, as will hereafter be set forth. The impression in the West had become thoroughly fixed in the minds of the proposed settlers and others, that if a man was not absent from his claim for more than six months at any one time, it would not be an abandonment and his residence would be unbroken. Many thousands of claims have been taken up and proved up by the settler making a visit and staying over night once in six months upon his claim. This probably arose both in the minds of the land officers and in the minds of the settlers, from the reading of Sec. 2297, R. S., which provides:

> "If, at any time after the filing of the affidavit as required in Sec. 2290, and before the expiration of five years mentioned in Sec. 2291,

it is proved, after due notice to the settler, to the satisfaction of the Register of the Land Office, that the person having filed such affidavit has actually changed his residence *or abandoned the land for more than six months at any time*, then in that event the land so entered shall revert to the Government."

In addition to this time-honored custom, which had endured since the settlement of the Northwest, every old soldier apparently had a firm belief that he was entitled to a quarter section of land in the way of a bounty for his services to the Government in time of war. Mr. J. L. Wells, one of the nine settlers (page 177 of Record), testified:

"Now, the fact of the case in regard to all of these is this:

Every man of the old soldiers felt that they were entitled to a claim without even residence, as far as that is concerned. They never had availed themselves of the privilege of taking up a claim from the Government; and by their reasons of service they felt as if they were entitled to a claim somewheres, somehow and some way, without any residence."

"Court: Without any residence?

A. Without any residence. That is the way we all felt.

Court: Not even one year?

A. Not even one year. That was our understanding years ago, that we should have a claim,

and they all felt that they were entitled to a claim some way, somehow, and somewheres. And there wasn't anything—there was nothing in our minds at that time that was any fraud committed at all in regard to getting a claim.

Court: Well, the question was a plain question as to whether they resided there.

A. That question is, they did not reside there, only they visited the claim. It is no use to mince words, or anything about it. That is all there was to it. Some of them went down there and stayed there a while for pleasure."

This was a witness called by the Government and held out to the jury and court as being a man entitled to full faith and credit. And on cross-examination (page 220 of Record), the witness further testified:

"Q. Now, after the war was over, there were certain provisions made, were there not, by the Government of the United States, favorable to the old soldiers getting land?

A. That was my understanding, yes.

Q. Well, as a matter of fact, didn't you know that land scrip in some instances was issued to old soldiers where they could go and take land without settlement or residence?

A. That was the common understanding among the old—the soldier boys—men—that they was entitled to 160 acres of land without residence.

Q. That was the general belief amongst the old soldiers?

A. That was it.

Q. That for their services in the war, they were entitled to at least 160 acres of raw land. Now, I will ask you whether or not that idea wasn't, your idea of that wasn't got from your associates in the Grand Army men and with the old soldiers themselves?

A. That was generally talked among the old soldiers, that they ought not to be required to make settlement on the land (page 221 of Record).

Q. And I will ask you if it was not a fact that it was generally believed by the people taking up Government land, and generally understood, that if a man visited his homestead every six months, or, in other words, was not absent for more than six months, that he was complying with the law (page 222 of Record)?

A. That was the way it was where I lived in Kansas. They visited their claim once in six months. That was always considered lawful and legal.

Q. And when you came to Oregon thirty-two years ago, there was a considerable quantity of Government land within the State of Oregon that was open to settlement as homesteads?

A. Yes.

Q. I will ask you whether or not, so far as you know, the same belief and the same practice

existed in the State of Oregon as had in the State of Kansas with regard to settlement?

A. Well, I didn't take very much active interest in any of the land particularly until this matter came up, and I judged my reasons a great deal by what I had seen in Kansas in regard to the same procedure of obtaining a homestead; and as I seen and knew of them doing there, I thought the same procedure was about the same here, about visiting the claim once in six months, and that the old soldiers were entitled to their service.

Q. Entitled to their serivce, and that if a man went onto a piece of ground for the purpose of establishing a homestead and built a house and established a residence there, and didn't abandon it for—wasn't away from it for more than six months at a time, you believed that he had then complied with the law?

A. That was generally the understanding.

Q. And that was your belief?

A. That was your belief?

Q. Now, when the Siletz Reservation was opened for settlement, did you know, or did you understand, that there was to be any different rule as to residence, settlement and cultivation, than there was under the general homestead law?

A. I didn't understand so.

Q. And did you believe that in taking up those homesteads, if the old soldier complied with the

law in the way that I have indicated, that he hadn't been absent from it for more than six months at a time, he would actually be complying with the law?

A. As I understood it. I want to distinctly state right here and now that I would not stoop to anything that would be a violation of the law, or would I endanger a comrade to taking up a claim that was in violation of the land law. I was honestly—what I did I did it honestly and with the intention of helping a comrade to obtain a homestead. I did it honestly, and without a thought of violating the land law in any way at all, whatever."

Mr. Thad Potter, also a witness called by the Government, testified (page 325 of Record) that he was familiar with the practice and custom of settlers under the general homestead act as to settlement and cultivation. The following questions were propounded on cross-examination:

"Q. I will ask you whether or not it is not a fact, Mr. Potter, that within the public land states it was considered that if a man was not absent from his homestead for a period exceeding six months, that, so far as residence was concerned, he complied with the law?

A. That was always my understanding.

Q. Then, I will ask you again (page 326), Mr. Potter, whether or not you, as an attorney, believed

that if the old soldiers homestead settlers, going into the Siletz, performed the same amount of residence as an ordinary settler would under the general homestead law, that he would be complying with the law?

A. Yes, sir; that was my understanding of it.

Q. State whether or not that you, as Mr. Jones' counsel, so advised him that that was your understanding.

A. Yes, sir; I did."

And again (pages 333-334 of Record):

"Q. Now, you have testified, in answer to a direct question of the District Attorney, that you had an idea that such residence as was made by these settlers was sufficient in law, or words to that effect. Where did you get that idea?

A. Well, I got that idea from the language of the statutes themselves, from the constructions that were obviously put upon them by the land officers themselves, and from the fact that it was almost the universal custom in those days, and from the further fact that the Land Office officials were thoroughly familiar with the custom and made no objection to it. It was done with the consent and connivance of the Land Office officials themselves, and the universality of the custom itself—from that fact led me to think it was all right.

Q. Now, as to whether or not these settlers only visited their claims once in six months, and

then only stayed over night or a day or so, you have not any personal knowledge, have you, Mr. Potter?

A. Very few cases. In fact I have no personal knowledge in any case that they did not. I have testified in a few cases that they did. In a few cases I have testified that they did.

Q. That they did what?

A. In a few cases that they went on there every six months, but I don't want to be understood as testifying that they did not go at other times. I don't know that. I saw them very rarely, usually not more than once or twice a year; twice a year at most did I see any of these men, and that generally when they were down there or going down there. I was very slightly acquainted with them; didn't meet them there or anywhere else very often."

Mr. Oliver I. Connor, called as a witness on behalf of the Government, and one of the nine claimants, testified (page 370 of Record) on cross-examination:

"Q. What did you understand as to the requirements of the law as to a homestead veteran staying on the homestead continually?

A. Why, I understood that we had to stay six months on the homestead.

Q. Six months?

A. Visit it every six months. That I understood was the law.

Q. And that was your idea when you filed on this claim?

A. Yes."

Mr. Louis Paquet, a witness called on behalf of the Government, and one of the settlers who contracted with Jones (but not one of the nine claimants), testified on cross-examination (page 490 of Record):

"Q. Now, I will ask you whether or not it is not a fact that there was a general belief amongst the people in the State of Oregon, and particularly amongst the settlers in the State of Oregon, that if they visited their homestead or was not off the homestead to exceed six months in the year, that they were complying with the law?

A. Yes, I knew they was taken up—they used to take up a homestead and go out and make a visit once in every six months; and that is the way there was a great many of these homesteads taken up.

Q. And those went to patent and were never questioned so far as you know?

A. Yes, sir."

Mr. M. J. Morse, called as a witness on behalf of the Government, and a settler in the Siletz under the Jones contract (but not one of the nine claimants) testified (page 514 of Record):

"Q. I will ask you whether or not you understood at the time that you filed on this claim, that

if a man visited his claim once in every six months or was not away from it for a period of six months at a time, that that was a compliance with the United States law regarding residence on homesteads?

A. That was my idea. I knew a good many that got claims in that way.

Q. And that patents were issued by the Government, and no questions raised?

A. Well, that I couldn't say. They seemed to acquire title.

Q. And what was your idea at that time as to whether or not preference was given to soldiers —ex-Union soldiers, in regard to residence and cultivation (page 515)?

A. I knew that the term of service in the Army was deducted from the five years' residence required.

Q. And when you took up this homestead over in the Siletz, did you believe that if you didn't remain away from it for a period of six months you would be complying with the law?

A. I did.

Q. And you believed that your term of service in the Army would be deducted, or would be credited to you on your residence on that land?

A. Yes."

Mr. George Rilea (page 539 of Record) testified to the same effect.

Mr. G. C. Lawrence, also a settler (but not one of the nine claimants), testified (page 562 of Record):

"Q. I will ask you if it is not a fact that it was generally accepted by the people in the State of Oregon and the State of Nevada, that if a homesteader was not absent from his homestead for a period exceeding six months, he would be complying with the law?

A. That has always been my understanding for a number of years.

Q. And that was an idea formed prior to the time that you lived at Siletz?

A. Yes, sir.

Q. And when you filed over there you honestly believed that if you visited that claim once in six months, and if the improvements—the house was built and some clearing done, you would have complied with the law of the United States?

A. That was my understanding, yes, sir."

Mr. Daniel Clark, called as a witness on behalf of the Government, and one of the settlers in the Siletz under the Jones contract (but not one of the nine claimants), testified (page 589 of Record):

"Q. During the time that you were living in Oregon did you have occasion to hear and know of about the manner in which homesteaders lived on their land when they went out in the timber and took up a homestead?

A. Yes, I have known something about that.

Q. I will ask you whether or not it was your belief and impression, as well as those of others in the community, that if a man visited his homestead every six months and built a cabin thereon and did some cultivation, that would be compliance with the United States law?

A. I think I understood it that way.

Q. (Page 590) You say that was your understanding, Mr. Clark?

A. I always thought that a soldier was justified in coming and going every six months.

Q. Yes. And you believed that at the time you took up your Siletz claim?

A. I think so."

Mr. Frank Hummel, a witness called on behalf of the Government, and one of the settlers (page 658 of Record), testified in substance to the same effect.

In fact, no witness was called, or testified, to any other practice in the taking up of homesteads in the West, and it was conclusively shown that this method was universally believed and accepted by the people as a lawful means of taking up a homestead. Therefore, these old soldiers cannot be charged with a fraudulent intent where they actually believed that they were complying with the law. And the instruction requested should properly have been given by the court.

The court erred in not giving the instruction requested by defendant appearing in the bill of exceptions on page 109 of the Record, in respect to the measure of damages, as we believe the law is correctly stated in that instruction.

Instructing the Jury to Return Interest.

Plaintiff in error before argument of the cause, presented to the trial court in writing, instructions requested by defendant to be given to the jury. These instructions were numbered from one to fourteen, inclusive. The instruction numbered seven so requested, was as follows:

"VII.

"If, under the testimony, you are convinced that the plaintiff in this action is entitled to recover, I instruct you that the measure of damages which plaintiff will be entitled to recover from defendant would be the market value of such of these nine claims as you may find that the Government is entitled to recover, at the time of the issuance of the final certificate by the land officers of the United States; that is, such price as the lands would, at that time, have brought in open market offered by a seller who was not obliged to sell, to a buyer who was not obliged to buy; and in arriving at this conclusion, you may take into consideration the location of the lands, their quality and their accessibility to roads, railways, or other means of transportation, and from all the legitimate

facts before you, determine what the reasonable value of these lands was at the time that the Government parted with its title."

The trial court gave the instruction as requested save and except that it added thereto, the following language, which was not in the instruction:

"With legal interest at the rate of six per cent per annum from that date to this."

(See page 113 of the Record.) Plaintiff in error excepted to that portion of the instruction directing the jury to return interest and such exception was allowed and settled by the court. (Page 114 of the Record.) When the instruction so requested was modified by the court by adding interest thereto, plaintiff in error excepted to the modification made by the court of said seventh requested instruction. This objection and exception was thoroughly understood by the court and was presented again to the court upon a motion for a new trial, so there was no misapprehension on the part of either the court or counsel but what defendant Jones was objecting and excepting to such instruction.

It must be remembered that a period of about eighteen years had expired from the time of the issuance of the final certificates until the trial of the case. The Government had allowed the six years to go by without bringing a suit to cancel the patents, although it was fully advised, as shown by the record, very shortly after the patents were is-

sued, when it cancelled the entries of other settlers to land entered and proved up at or about the same time. It did nothing toward the confirmation of these patents for many years and then to permit it to collect interest as a matter of right thereon, would be inequitable and unjust, and in any event, this question of interest should have been submitted to the jury for their determination as to whether or not interest should have been added to the principal as a part of the damages, and it was error for the court to direct them to return interest upon any sum that they might determine was the value of the land taken.

In actions sounding in tort, interest is not allowed as a matter of right, but must be left to the jury to determine in their discretion whether interest should be allowed as a part of the damages or not.

Eddy v. LaFayette, 163 U. S. 456-467.

In this case, Mr. Justice Sheras, speaking for the court, says:

> "Undoubtedly the rule, in cases of tort, is to leave the question of interest as damages to the discretion of the jury."

In this case the court instructed the jury that the measure of damages was the market value of the hay burned, together with interest at 6 per cent per annum from the date of the destruction of the hay. The court did not reverse the case, however,

for the reason that the jury, by their verdict, did not allow any interest, and therefore the defendant had not suffered any injury by virtue of the instruction.

White, et al., v. U. S., 202 Fed., p. 501 (Circuit Court of Appeals, 5th Circuit), was an action in tort for the value of timber cut and removed from lands of the United States, and in that case 13 years had elapsed between the time of bringing the action and the conversion. In this case, Justice Grubb, speaking for the Court of Appeals, said:

> "The verdict and judgment show, and the parties concede, that interest was allowed by the jury from the date of conversion to the date of trial—a period of 13 years—aggregating $2,152.80, almost one-half of the entire judgment. The oral charge of the court is set out in bill of exceptions in its entirety and contains no reference to the question of interest. Interest in actions of tort in the Federal Courts is not allowable as a matter of right; but its allowance, as part of plaintiff's damages is discretionary with the jury. *Eddy v. LaFayette*, 163 U. S. 458-467. . . . The jury were not instructed by the court below that they possessed any such discretion, and probably included interest in their verdict upon the idea that the plaintiff was entitled to it as a matter of right and not of discretion. . . .
>
> It is true the plaintiffs in error do not assign error because of this omission of the court,

but a plain error may be noticed by us, in the absence of any assignment. In view of the long and unexplained delay on the part of the Government in instituting this suit, we feel that a proper exercise of discretion by the jury would have denied the plaintiff interest. . . .

In view of these conclusions, the recovery of the plaintiff in the court below should have been limited to the value of the lumber manufactured from the timber converted at $10 per thousand feet, without interest, which, as appears from the judgment entry, would amount to the sum of $2,300. The order of the court is that, unless the defendant in error enter upon the record of the court below, within — days from the date of this judgment, a remittitur of that part of the judgment in excess of the amount mentioned, the judgment of the court below be reversed and the cause remanded for further proceedings; but, if the remittitur is entered by the defendant in error, as herein required, the cause stands affirmed with costs."

It was clearly error of the court to instruct the jury that if they found damages they must also find interest thereon. At most, the court could only submit the question of interest to them for them to determine whether or not interest should be added as damages.

That the jury did assess interest under the instructions of the court appears from the affidavit of B. F. Holman, a prominent merchant and a

member of the jury who tried the case, which affidavit was presented to the court below on the motion for a new trial in this case, and is as follows:

"District of Oregon,—ss.

I, B. F. Holman, being first duly sworn, depose and say:

That I am a citizen of the United States, over the age of 21 years;

That I was duly impaneled and sworn as a juror to try the above entitled cause in the above entitled court; that after the jury had heard the charge of the court and retired to the jury room for deliberation, the jury unanimously agreed and found that the nine homestead claims involved in the above entitled cause were, at the time of final proof and issuance of patent by the United States, of the market value of $1,000 each, or a total of $9,000; that under the instructions of the court, the jury added to said value of $9,000, 6 per cent interest from the date of final proof on said claims until the trial of the cause, which interest so computed amounted to the sum of $9,204.80, which, added to the $9,000 value of the land, made a total of $18,204.84, the amount of the verdict rendered by the jury in the above entitled cause.

That the foregoing affidavit is true, to the best of my knowledge and belief, so help me God.

B. F. Holman.

Subscribed and sworn to before me, this 15th day of January, 1919.

John H. Hall,
Notary Public for Oregon.

(Notarial Seal.)

My commission expires August 28, 1919."

The interest, in this case, amounted to more than the principal, and we do not believe that if the jury had had any discretion in the matter, they would have added interest, owing to the long and unexplainable wait of the Government in asserting its claim. Such delays are not favored as between private individuals, and when the Government as a land owner goes into court, it stands exactly upon the same footing before the court as a private individual.

We sincerely request your Honorable Court to read the entire testimony in this case as shown by the Record, giving to the defendant at the outset the presumption of honesty, integrity and fair dealing, and then to determine whether or not that presumption has been overcome by any evidence in the Record directly connecting Mr. Jones with the knowledge of, or participation in, any fraud against the Government in this case.

Respectfully submitted,

JOHN H. HALL,
JAY BOWERMAN,
Attorneys for Plaintiff in Error.

In the Supreme Court of the United States

OCTOBER TERM, 1921.

WILLARD N. JONES, PLAINTIFF IN ERROR,
v.
THE UNITED STATES OF AMERICA. } No. 103.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The writ of error in this case presents for review the judgment of the Circuit Court of Appeals for the Ninth Circuit (R. 1026) affirming a judgment for $18,204.84 and costs in favor of the United States entered by the United States District Court for the district of Oregon (R. 69, 70), in an action at law tried before a jury, brought by the United States to recover the value of lands entered as homesteads, patents to which were obtained by fraud.

Opinion of the Circuit Court of Appeals, R. 1019–1026, 265 Fed. 235.

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THE FACTS.

The United States brought suit against Jones to recover $133,000, the value of land included in nine homestead entries which the complaint alleged were patented by the Government as a result of fraud and misrepresentation perpetrated at the instigation and with the connivance of Jones.

The scheme alleged in the complaint and developed by the evidence was this: Certain lands, heavily timbered, embraced within the former Siletz Indian Reservation in Oregon, were opened to homestead and certain other classes of entry pursuant to the provisions of the Act of August 15, 1894, ch. 290, 28 Stat. 286, sec. 15. That act ratified a treaty entered into with the Indians upon that reservation (pp. 323–326) and provided (p. 326) that the nonmineral lands ceded by the Indians should be disposed of under the provisions of the homestead law. The homesteader was required to pay $1.50 per acre for the land in addition to the usual fees exacted. There was a further provision that "three years' actual residence on the land shall be established by such evidence as is now required in homestead proofs."

Jones's attention was attracted to these lands, and he conceived the plan of locating old soldiers, Civil War veterans, upon them. He caused a cruise of the land to be made, procured a number of such veterans, through the exertions of one Wells, who was acknowledged to be his agent for such purpose,

to make homestead entries and submit final proof thereon. Preliminary to making filings each of the entrymen entered into a contract with Jones wherein it was agreed that Jones would locate him upon lands to be homesteaded, prepare the necessary filing papers, etc., build a house and cultivate such portion of the land as required under the law. Jones further agreed to advance, if required, the fees exacted at the land office to make and perfect the filing and also the necessary expenses of the entrymen, not to exceed $60. For such services Jones was to receive $185 for locating and preparing the papers, $100 for the house, $175 for cultivating the land, and the repayment of the sum advanced for fees and expenses, a total of $520.

There was a further provision that after final proof had been submitted, Jones, at the option of the entryman, would procure for the latter a loan not to exceed $720, to be secured by a mortgage upon the land homesteaded, and that immediately upon the procurement of the loan all sums of money due under the contract, as well as those advanced by Jones, should become payable and be paid out of the loan so secured; further, that if such loan was not desired, all moneys advanced, together with those agreed to be paid by the entryman, should become due and payable as soon as final proof was made.

A form of this contract is set out in the complaint. R. 12–15, and in the evidence, Government Exhibit 1, R. 140–143.

The theory upon which the suit was brought was that the purpose and intent of Jones in all these transactions was to procure these lands for his own benefit, through the instrumentality of these veterans, by a pretended or colorable compliance with the requirements of the applicable law; that the motive underlying the contract which he entered into with each entryman was to so bind the latter to him that the result would be the securing of the land for himself; and that the ostensible agency of Jones under the contract was merely a cover or blind to his real purpose.

The defendant in his answer (R. 25 *et seq.*) made what amounted to a general denial of the allegations of the complaint so far as any unlawful purpose was concerned, although he admitted the execution of the contracts and the mortgages. For separate answers and defenses (R. 40 *et seq.*) he averred that his intent was that the entryman should in all respects comply with the law; that in all particulars respecting the contracts and mortgages he acted in good faith without any purpose to deceive the United States. Further, that the final proofs submitted by eight of the entrymen showed on their face that three years' residence had not been maintained; that consequently the land office officials were not deceived by the same but allowed the proofs under a mistake of law, supposing that the military service of the claimants might be allowed to reduce the period of residence required under the special act by which the lands were opened to entry. As to the other entry,

that of Wells, who made commutation proof, it was alleged that his proof showed that he had *not* resided upon and cultivated the land for the fourteen months' period required in the case of commuted entries, and hence that, as to that entry, the land office was not deceived. It was also averred that the lands patented had been conveyed to innocent purchasers. The value of the lands as declared in the complaint was denied and it was averred that any recovery should be at the minimum price fixed by the special statute at which they might be acquired, namely, $1.50 per acre. R. 53.

There was also a plea of the statute of limitations (Act of March 3, 1891, ch. 561, 26 Stat. 1095, 1099), which it was averred barred the suit, since the complaint was not filed within six years from the issuance of the patents for the lands. R. 42.

To the separate defenses which alleged that the land department was not deceived, that the land had been conveyed to innocent purchasers, and that the suit was barred, the United States entered a demurrer. This was sustained as to the plea in bar but not as to the others. R. 56; 232 Fed. 218. Whereupon the Government filed a reply (R. 56 *et seq.*) which while admitting the facts as to the proofs, denied that the land officials were not misled and asserted that but for the fraud the patents would not have issued.

Although the record does not disclose it, we think it should be stated as a part of the chronology of the case that thereafter defendant moved for judgment upon the pleadings, which was granted and the cause

dismissed. Thereupon the United States sued out a writ of error; the Circuit Court of Appeals reversed the judgment and remanded the case with direction to overrule the motion for judgment, 242 Fed. 609. The case then proceeded to trial before a jury.

After the entry of judgment upon the verdict of the jury, a motion for a new trial was made and denied. R. 70. Thereupon a writ of error was sued out from the Court of Appeals (R. 2, 3) where, as already stated, the judgment was affirmed.

The errors assigned to support the writ of error in this court raise the following questions: (*a*) The sufficiency of the Government's pleadings to make a case against the defendant Jones; (*b*) the sufficiency of the evidence to warrant the verdict and judgment; (*c*) the correctness of rulings as to the admission of evidence; and (*d*) the correctness of a portion of the charge to the jury and of the refusal to give certain requested charges.

In support of our position that the judgment of the court below was correct, we submit the following propositions:

1. The Government's pleadings state a cause of action against Jones.

2. There was ample evidence adduced to support the finding of the jury that defendant was guilty of the fraud and misrepresentation charged against him.

3. There was no prejudicial error in the rulings of the court on the admission of evidence.

4. The court's charge to the jury was fair, proper, and no substantial errors appear therein nor in respect to rulings on requested charges.

ARGUMENT.

I.

The Government's pleadings state a cause of action against Jones.

Plaintiff in error is again contending, as he did twice unsuccessfully in the Circuit Court of Appeals, that the pleadings state no cause of action against him.

To support this contention it is urged that as the proofs submitted by the several entrymen showed upon their face that the law as to residence had not been complied with for the requisite period, patents should not have issued; that the issuance thereof was due to a mistake of law by the land department and that, as under a proper construction of the law the proofs were not acceptable, the misrepresentations as to the intent when the entries were made and perfected were immaterial.

Otherwise stated, Jones says that three representations were made: (*a*) that the entrymen intended to make the lands entered their homes; (*b*) that each made the entry for his own use and benefit and not for another; and (*c*) that the law had been complied with as to residence and cultivation for a specified time. He admits that these were false, but says that as the third representation did not go far enough, the other two do not matter.

We answer by saying the homestead law requires that an entry thereunder shall be made with the intent to make the land a home and that it is essential that the entry be made solely for the use and benefit of the entryman. These conditions are just as essential and important as compliance with the requirements as to residence and cultivation. Without them no application to enter can properly be allowed nor patent issued thereon. If the entryman fails in any of these points, it is the same as if he had violated *all* the law. Meeting all other requirements will not avail.

These entrymen, when they applied to enter the lands, made affidavit that they intended to make the same their home and sought to acquire them for their own use and benefit and not for another. This was false, and without those statements the entries would not have been allowed. Had the truth been known the applications would have been rejected, and there would have been no opportunity or occasion for final proofs. Jones set in motion these operations. Can he now escape responsibility for the natural consequences of that first unlawful step?

Furthermore, had it been known when the proofs were considered by the land department that the same unlawful intent persisted it would not have made any mistake as to the construction of the law, for the proofs would undoubtedly have been rejected and the entries cancelled for lack of home-making intent and of acquisition for the sole use and benefit

of the entrymen. Fundamentally, Jones was responsible for the mistake of law made by the land department. In any event, he cannot now ask the court to speculate as to whether the misrepresentations as to residence and cultivation were indeed the sole basis for the issuance of the patents. These representations were false; they were material; they deceived the Land Department; without them, the allowance of the entries and the issuance of patents would not have occurred.

It is not necessary that the false representation should have been the *sole* inducement to a contract. A person who has by misrepresentation induced another to enter into a contract will not generally be heard to deny its materiality; and it is enough if the party deceived can show that the misrepresentation had a *substantial* effect in inducing the contract, and that, without it, he would not have entered into the transaction. *Safford* v. *Grout*, 120 Mass. 20, 25; *Windram* v. *French*, 151 Mass. 547, 553; *Jordan* v. *Pickett*, 78 Ala. 331, 338, 340; *Winter* v. *Bandel*, 30 Ark. 362, 373; *Addington* v. *Allen*, 11 Wend. 374, 381; *Fishback* v. *Miller*, 15 Nevada, 428, 442; *James* v. *Hodsden*, 47 Vt. 127, 137; *Clarke* v. *Dickson*, 6 Com. Bench (N. S.) 452; *Sioux Nat. Bank* v. *Norfolk State Bank*, 56 Fed. (C. C. A.) 139, 141; *Tooker* v. *Alston*, 159 Fed. (C. C. A.) 599, 603, 604.

As was well said by the Supreme Court of Vermont in *Cabot* v. *Christie*, 42 Vt. 121, 127:

> What the plaintiff would have done but for the false representation, is often a mere speculative enquiry, and is not the test of the plaintiff's right. If the false representations were material and relied upon, and were intended to operate and did operate as one of the inducements to the trade, it is not necessary to enquire whether the plaintiff would or would not have made the purchase without this inducement.

Clearly under the law and the facts presented a case was made out against Jones.

II.

There was ample evidence adduced to support the finding of the jury that defendant was guilty of the fraud and misrepresentation charged against him.

Under the well settled rule that on a writ of error to review a judgment entered upon a verdict of a jury, questions of law only are considered, the only point with respect to the finding of the jury open here is whether there was any competent evidence sufficient to warrant that finding. It is impossible to read the record in this case without reaching the conclusion that an abundance of such evidence was presented at the trial. Of the nine men to whom the lands here involved were patented, only three were living at the time of the trial and those three, Wells, Connor, and Hunter, were called as witnesses

by the Government. The testimony of others who entered into like contracts with Jones was presented by the Government and admitted for the purpose of showing the defendant's intention. Witness after witness testified with respect to the transactions had with Jones. The testimony of one is substantially that of all. It is to this effect:

The entrymen were with one exception residents of Portland, Oregon; they heard through Wells of the plan conceived by Jones to have entries taken up in the Siletz country by Civil War veterans; they entered into the contract which had been prepared by Jones; they were taken in parties to the land by Wells or Potter, the latter an attorney working with Jones in the matter; they were shown the claims assigned to them; they were taken to the local land office where filings were made; the expenses of the filings and of the trip were paid by Jones; about six months later they were notified that they must visit their claims; they spent one or two nights in the locality; some slept in their cabins which has been erected by Jones, others stayed at the "headquarters camp" maintained by Jones, where they were all subsisted; in some instances the visit to the claim was about an hour or two in duration; six months later another similar trip was made with like incidents; none of the entrymen paid anything for expenses; everything was furnished them; they were told when final proof must be made; the publication of notice of intention to make proof was at-

tended to by Jones or his agents, who arranged for the proof witnesses; the entrymen never gave up their previous places of residence or abode; they had no intention of making the land entered a home. The cabins erected on the claims were habitable but no furniture was ever put in them. Some slashing was done, usually of about an acre, by men employed by Jones; a few trees were set out or a planting of some vegetables. All the entrymen here involved executed a mortgage to Jones and received from him $200 in cash. Four of the patentees deeded to one Sisler, a trustee for Jones; the others to one Montague.

With respect to the intent of Jones, the testimony of J. L. Wells, his acknowledged agent in procuring the soldiers to make filings, is significant. In the course of his examination he was asked (R. 150):

> Q. What did Mr. Jones tell you as to his idea and purpose in having you see these old soldiers to file on this land?
>
> A. I think the purpose was to get possession of them in some way or other, in buying them from each one that took up the land.
>
> Q. Who was to get possession of them?
>
> A. I think it was Mr. Jones, or whoever he wanted to.

As to the purpose for which the entries were made, the following from the testimony of Wells is important (R. 196):

> Q. What did you do with your land after you got your title?
>
> A. I sold it to Mr. Jones for $200.

Q. And was that the understanding you had in the beginning, that you were to do that?
A. That was the understanding.

We think it is clear that the plan followed by Jones was *in essence* the old "dummy entry" plan. These old soldiers with one or two exceptions were impecunious: could not hope to pay Jones what was stipulated under the contract and only expected to get something out of the deal when title was secured. Instead of following the old dummy scheme by merely having verbal agreements that the entryman should allow his name to be used and upon deeding to the procurer receive $200 for his services, Jones proceeded more artfully by attempting to conceal the real nature of the transaction and to give it a color of honesty. The result, however, was expected to be the same. $200 was paid the entryman when he executed the mortgage. Jones expected that the mortgage would not be paid, and while it is true that the patentee might deed to some one else subject to the mortgage, the probability was that the sale would be made to Jones, since the patentee knew Jones to be interested in the proposition and had dealt exclusively with him. In the event of a sale to another, Jones could not lose since he was protected by the mortgage.

In the face of all this evidence, the jury certainly had ample warrant in finding that the patents to these nine entries were obtained by fraud and misrepresentation for which Jones was responsible as instigator.

III.

There was no prejudicial error in the rulings of the court on the admission of evidence.

Plaintiff in error questions the action of the trial court in admitting the evidence of one Miller, an attorney at law who represented certain persons who filed contests in the local land office against certain entries other than those in this suit, made by individuals under similar contracts with Jones. Bill of exceptions, R. 93 *et seq.* The witness Miller was permitted to testify that Jones made a proposition to pay $200 to compromise each of those contests.

This evidence was offered merely to show the intent upon the part of Jones concerning all his dealings in regard to the Siletz lands. Such evidence was properly admitted for that purpose, for the intent of Jones in the transactions affecting these nine claims in suit was a material element in the case and his action as to other matters of like nature was relevant in establishing that motive or intent. Moreover, a reasonable discretion is allowed the trial court in such matters. *Wood* v. *United States*, 16 Pet. 342, 347, 349, 360; *New York Mut. Life Ins. Co.* v. *Armstrong*, 117 U. S. 591, 598, 599; *Moore* v. *United States*, 150 U. S. 57, 60, 61; *Exchange Bank* v. *Moss*, 149 Fed. 340, 341, *et seq.*

Error is assigned upon the admission of certain evidence as to the value of the lands in controversy. Assignments V to VIII, inclusive, R. 1029, 1030; Bill of exceptions, R. 96–104.

We do not know to what extent the objection to this evidence goes, but it appears that these witnesses by whom the Government sought to establish the value of these lands were familiar with the general locality; three of the four had cruised lands in townships very near the township in which the lands were situated. They were permitted to testify as to what timber lands in those near-by townships sold for in 1902, which was about the time when the entries were patented. Their statements were based upon newspaper reports of sales or upon what they had heard.

We think this evidence competent, and hence properly admitted, to show the value of the lands in suit. In establishing the value of land, evidence may be received of the value of near-by similar land, or of sales of such latter land not too remote in point of time, and evidence regarding sales is not incompetent because based upon hearsay, or knowledge obtained by one in the course of business, or through such sources as are commonly relied upon in such transactions. *Cliquot's Champagne*, 3 Wall. 114, 141; *Montana Ry. Co.* v. *Warren*, 137 U. S. 348, 352, 353; *Virginia* v. *West Virginia*, 238 U. S. 202, 212; *Sanitary District* v. *Boening*, 267 Ill. 118, 121, 122; *Whitney* v. *Thacher*, 117 Mass. 523, 527; *Fourth Nat. Bank* v. *Commonwealth*, 212 Mass. 66, 68; *Erk* v. *Simpson*, 137 Ga. 608, 613; *Betts* v. *Southern Calif. etc., Exchange*, 144 Calif. 402, 409; *Lynch* v. *United States*, 138 Fed. (C. C. A.) 535, 538, 539.

IV.

The court's charge to the jury was fair, proper, and no substantial errors appear therein nor in respect to rulings on requested charges.

Several assignments of error go to the charge of the court to the jury and to refusals to charge.

The charge was a very comprehensive one, in which the court went to considerable pains to make clear to the jury the law applicable to the case. It was fully as favorable to the defendant as it could properly be, and certainly was not prejudicial to him.

The requests refused were largely other forms of what had been substantially included in the charge as given, and it was not necessary or proper for the court to repeat in the language of the defendant what had already been said.

One portion of the charge is particularly pointed to as error. It is that which related to the measure of damages. Bill of exceptions, R. 113, 114. In brief, the court instructed the jury that if they found for the Government, the amount of recovery to which the latter would be entitled would be the market value of the lands at the time of the issuance of final certificates upon the entries, "*with legal interest at the rate of 6 per cent per annum from that date to this.*"

If the error asserted as to this charge go to the matter of allowance of interest at all, it is clearly untenable, for interest may be allowed in cases of tort. *Lincoln* v. *Claflin*, 7 Wall. 132, 139; *Eddy* v. *Lafayette*, 163 U. S. 456, 467; *District of Columbia* v *Robinson*, 180 U. S. 92, 107, 108; *Bates* v. *Dresser*, 251

U. S. 524, 531. However, if it is contended that the question of allowance of interest was for the discretion of the jury, that view is undoubtedly supported by the decisions of this court just cited.

But it is not clear that the court did not by its charge intend to indicate to the jury that interest was to be allowed in its discretion. The New York Court of Appeals, in *Wilson* v. *City of Troy*, 135 N. Y. 96, 103, so construed a similar charge.

Moreover, interest is allowable as a matter of *right* in the case of conversion, and we can perceive no valid reason why, if it is allowed when one's personal property is wrongfully taken, it should not be allowed when one's real property is so taken.

In any event, the exception taken to the charge was general, did not point out to the court the specific point in which the charge was deemed erroneous, and therefore is not open here. *Lincoln* v. *Claflin, supra; Southern Pacific Co.* v. *Arnett*, 126 Fed. (C. C. A.) 75, 80, 81. This was the view taken by the Court of Appeals. (R. 1025, 1026, 265 Fed. 241, citing *Hammond* v. *United States*, 246 Fed. 40, 47.)

CONCLUSION.

The judgment of the Circuit Court of Appeals was right and should be affirmed.

JAMES M. BECK,
Solicitor General.
WILLIAM D. RITER,
Assistant Attorney General.
H. L. UNDERWOOD,
Attorney.

JANUARY, 1922.

○

decision.

JONES *v.* UNITED STATES.

ERROR TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 103. Argued January 20, 1922.—Decided February 27, 1922.

1. One who, in pursuance of a scheme to acquire the land for himself, procures others to make homestead applications and entries, knowing that they have no intention to establish residence or otherwise comply with the law and that their proofs to the contrary, made with his connivance, and upon the faith of which the patents are issued, are false, is guilty of defrauding the United States of the value of the land. P. 47.
2. The right of the United States to recover damages for such a fraud is not defeated by the facts that the period of residence stated in the entry proofs was insufficient to comply with the statute and that, but for a mistake of law in that regard upon the part of the Land Department, the patents would not have issued. P. 46.
3. In an action for fraud by inducing fraudulent entries resulting in patents, evidence that the defendant induced other entrymen to file on other land and of his conduct touching contracts on similar claims, is admissible as bearing on his knowledge and intent, if

40. Argument for Plaintiff in Error.

the judge in his discretion does not regard it as too remote or as raising too lengthy and complex collateral issues, even if afterwards explained by the defendant. P. 48.

4. Evidence of current rates for similar lands situate in adjacent townships, given by experts who learned the rates by experience and report, *held* admissible to prove value of the lands in question. P. 48.

5. In an action for defrauding the Government of public land by procuring false proofs upon which patents were issued, *held* that an instruction directing the jury, if they found for the plaintiff, to measure the damages at the market value with legal interest at 6 per cent. from the date of the final certificate to that of the trial, was not a ground for reversing the judgment rendered for the United States. P. 49.

265 Fed. 235, affirmed.

ERROR to a judgment of the Circuit Court of Appeals affirming a judgment for the United States in the District Court in an action to recover the value of public lands patented as a result of fraudulent entries and proofs procured by the defendant.

Mr. John H. Hall and *Mr. Jay Bowerman*, for plaintiff in error, submitted.

Entrymen unable to make improvements by reason of age or poverty may contract with another to build dwellings, clear land and furnish money to buy stock and provisions, without violation of the homestead laws. *Conway* v. *United States*, 95 Fed. 615; *Grubbs* v. *United States*, 105 Fed. 314, 319.

Mortgaging the homestead by entryman is not alienation where the mortgage is given to procure money to improve the land. *Fuller* v. *Hunt*, 48 Idaho, 163; *Dickerson* v. *Bridges*, 147 Mo. 235; *Orr* v. *Ulyatt*, 23 Nev. 134; *Stock* v. *Duvall*, 7 Okla. 213; *Hafeman* v. *Gruss*, 199 U. S. 342, 345.

After final proof a homestead claimant may, before patent issues. contract, sell or convey, as though patent had

issued. *Williamson* v. *United States*, 207 U. S. 425; *United States* v. *Biggs*, 211 U. S. 507.

Fraud is never presumed, and when alleged must be clearly made out. Where cancellation of a patent is sought on the ground of fraud, the proof of the fraud must be clear and convincing.

It is conceded that the statute specially required that the entrymen should have actually resided on the land three years. Therefore, proof that the entryman in any of the cases had resided on the land but one year, or one and one-half years, was immaterial, because, if true, it would not furnish to the officers any excuse for issuing a final receipt or patent; and it therefore became immaterial whether the representations made by the entrymen as to the time and character of their residence, and as to their intent to make the land their home, were true or false. *Slaughter's Administrator* v. *Gerson*, 13 Wall. 379, 383, 385; *King* v. *Lamborn*, 186 Fed. 21, 28; *Ming* v. *Woolfolk*, 116 U. S. 599, 602; 14 Am. & Eng. Enc. of Law, 59; Bigelow on Fraud, p. 139; *First National Bank* v. *Osborne*, 18 Ind. App. 442; *Furneaux* v. *Webb*, 33 Tex. Civ. App. 560; *Russell* v. *Branham*, 8 Blackf. 304; *Prince* v. *Oberholser*, 75 Wis. 646; *Platt* v. *Scott*, 6 Blackf. 389; *Robbins* v. *Hope*, 57 Cal. 496; 2 Kent Com., 4th ed., pp. 484, 485; *Silver* v. *Frazier*, 85 Mass. 382; *Missouri Lincoln Trust Co.* v. *Third National Bank*, 154 Mo. App. 89; *Hall* v. *Johnson*, 41 Mich. 286; *Conway* v. *United States* 95 Fed. 615, 618.

In some jurisdictions, evidence of sales of land of like quality in the immediate neighborhood is permitted, while other courts refuse to allow testimony of this character,—among the latter, California, Iowa, Kansas, Minnesota, Nebraska, New York, Ohio, and Pennsylvania. See *Neely* v. *Western Allegheny R. R. Co.*, 219 Pa. St. 349; *Pittsburgh & Western R. R. Co.* v. *Patterson*, 107 Pa. St. 461; *Kansas City &c. R. R. Co.* v. *Weidenmann*, 77 Kan.

300. This question has not been directly passed on by this court; the nearest approach is the case of *Kerr* v. *South Park Commissioners*, 117 U. S. 379.

In order to support the allegations in the complaint, the action of the entrymen must have been intentionally wrong and fraudulent. If they were acting under an honest mistake of the law, they were not endeavoring to deceive the Government.

A period of about eighteen years had expired from the time of the issuance of the final certificates until the trial of the case. The Government had allowed the six years to go by without bringing a suit to cancel the patents, although it was fully advised, as shown by the record, very shortly after the patents were issued, when it canceled the entries of other settlers to land entered and proved up at or about the same time. To permit it to collect interest as a matter of right would be inequitable and unjust. In any event, this question of interest should have been submitted to the jury, and it was error for the court to direct them to return interest upon any sum that they might determine was the value of the land taken. *Eddy* v. *Lafayette*, 163 U. S. 456, 467; *White* v. *United States*, 202 Fed. 501.

Mr. Assistant Attorney General Riter, with whom *Mr. Solicitor General Beck* and *Mr. H. L. Underwood* were on the brief, for the United States.

It is not necessary that the false representation should have been the sole inducement. *Safford* v. *Grout*, 120 Mass. 20, 25; *Windram* v. *French*, 151 Mass. 547, 553; *Jordan* v. *Pickett*, 78 Ala. 331, 338, 340; *Winter* v. *Bandel*, 30 Ark. 362, 373; *Addington* v. *Allen*, 11 Wend. 374, 381; *Fishback* v. *Miller*, 15 Nev. 428, 442; *James* v. *Hodsden*, 47 Vt. 127, 137; *Clarke* v. *Dickson*, 6 Com. Bench (N. S.) 452; *Sioux National Bank* v. *Norfolk State Bank*, 56 Fed. 139, 141; *Tooker* v. *Alston*, 159 Fed. 599, 603, 604; *Cabot* v. *Christie*, 42 Vt. 121, 127.

There was ample evidence to support the finding of the jury that defendant was guilty of the fraud charged against him.

Defendant's action as to other matters of like nature was relevant in establishing his motive or intent in this case. Moreover, a reasonable discretion is allowed the trial court in letting in such evidence. *Wood* v. *United States*, 16 Pet. 342, 347, 349, 360; *New York Mutual Life Insurance Co.* v. *Armstrong*, 117 U. S. 591, 598, 599; *Moore* v. *United States*, 150 U. S. 57, 60, 61; *Exchange Bank* v. *Moss*, 149 Fed. 340, 341.

In establishing the value of land, evidence may be received of the value of nearby similar land, or of sales of such land not too remote in point of time, and evidence regarding sales is not incompetent because based upon hearsay, or knowledge obtained by one in the course of business, or through such sources as are commonly relied upon in such transactions. *Cliquot's Champagne*, 3 Wall. 114, 141; *Montana Ry. Co.* v. *Warren*, 137 U. S. 348, 352, 353; *Virginia* v. *West Virginia*, 238 U. S. 202, 212; *Sanitary District* v. *Boening*, 267 Ill. 118, 121, 122; *Whitney* v. *Thacher*, 117 Mass. 523, 527; *Fourth National Bank* v. *Commonwealth*, 212 Mass. 66, 68; *Erk* v. *Simpson*, 137 Ga. 608, 613; *Betts* v. *Southern California Exchange*, 144 Cal. 402, 409; *Lynch* v. *United States*, 138 Fed. 535, 538, 539.

Interest may be allowed in cases of tort. *Lincoln* v. *Claflin*, 7 Wall. 132, 139; *Eddy* v. *Lafayette*, 163 U. S. 456, 467; *District of Columbia* v. *Robinson*, 180 U. S. 92, 107, 108; *Bates* v. *Dresser*, 251 U. S. 524, 531. That the question of its allowance is for the discretion of the jury, is undoubtedly supported by the decisions of this court cited; but it is not clear that the court did not by its charge intend to indicate to the jury that interest was to be allowed in its discretion. *Wilson* v. *Troy*, 135 N. Y. 96, 103.

Moreover, interest is allowable as a matter of right in a case of conversion, and we can perceive no valid reason why it should not be allowed when one's real property is wrongfully taken.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a suit brought by the United States to recover the value of lands that it alleges it was induced to part with through the defendant's fraud. The lands concerned had been in the Siletz Indian Reservation in Oregon and had been thrown open to homestead entry by the Act of August 15, 1894, c. 290, § 15, 28 Stat. 286, 326. In addition to the usual fees a payment of $1.50 per acre was required, and three years' actual residence on the land was to be established by such evidence as was required in homestead proofs. The complaint alleges that the defendant, with intent to acquire title to the lands mentioned for himself and associates, procured certain old soldiers, named, to make homestead applications and entries upon land pointed out by him, each previously signing an agreement with him by which for his information and services in drawing papers and affidavits the entryman was to pay him $185; the entryman was to employ him to build a home upon the land, paying him for that $100, and to clear or cultivate the land so far as required by the laws in order to perfect title, paying him for that $175. The entryman agreed to comply with the laws as to residence and the defendant agreed to do all the work required. The defendant agreed to advance, if required, not exceeding $60 for the fees of the land office, and, after final proof, at the option of the entryman, to procure a loan not to exceed $720, to be secured by a first mortgage on the claim, all payments stipulated from the entryman then to become due and to be payable out of the loan, or if there was no loan to be paid upon final

proof, which was to be made as soon as the laws had been complied with.

It is alleged that the agreement was intended by the defendant to conceal his intent to acquire title to the land; that the entryman did not intend to establish a residence upon the lands so entered and that the defendant knew that they did not intend to and intended that they should not. The complaint goes on to allege fraudulent proofs made by the defendant's procurement, the issue of final certificates and subsequently of patents, in ignorance of the fraudulent character of the entries, the defendant in each case having received a mortgage as agreed. The answer admits the contract, denies all fraud and sets up that the final proof of the entrymen disclosed that they had not resided for three years upon the land as required by the Act of August 15, 1894, it then being supposed by everyone that soldiers were allowed to count their time of service, as by Rev. Stats., §§ 2304, 2305. The facts are admitted, and it is pleaded and argued that the issue of patents by officers of the United States with knowledge of these facts was due to a mistake of law for which the defendant could not be held responsible. The defendant pleaded some other matters to which it is not necessary to refer, including the fact that the causes of action did not accrue within six years—a defence that is not pressed here. See *United States* v. *Jones*, 218 Fed. 973; 242 Fed. 609, 616.

After the skirmishes reported in the two volumes of the Federal Reporter the case came on for trial and resulted in a verdict for the plaintiff for $18,204.84. The judgment of the District Court was affirmed by the Circuit Court of Appeals. 265 Fed. 235. The first question argued there, as here, was whether the knowledge attributable to the United States that the entrymen had not been upon the land three years is a bar to a recovery. We agree with the Circuit Court of Appeals that it is not

necessarily a bar. If the defendant is responsible for fraudulent representations of intent to establish a residence and to fulfill in good faith the other requirements for a homestead, and those representations induced the issue of the patents, knowledge of another fact that also would have prevented the issue but for a mistake of law does not take the right to recover away. We can see no reason why failure through ignorance of law to insist upon an independent ground for refusal should deprive a party to a bargain of its rights upon other grounds, or of its right to require good faith in regard to them. An express waiver would have no such effect.

The defendant presents the case as if the only fraudulent representations charged were that the entrymen had been upon the land for a year or year and a half whereas in fact they were there much less, and then presses the argument that the falsity of such statements was immaterial because the statement as made disclosed the entrymen's want of right. But as we have implied, the charge of the Government goes much farther, and if the evidence as a whole tended to show the fraud that was charged, perjury as to the duration of residence would be a fact to be considered, especially if the time of residence fixed in the affidavits satisfied what everyone then thought were the requirements of the law.

We may assume for the purposes of decision that the agreement and mortgage were not unlawful on their face and that the defendant took pains to make them known to the authorities; but obviously they might be made an instrument for the scheme alleged. They were prepared in contemplation of a plan to collect old soldiers for the purpose of making entries, the defendant paying an agent five dollars a piece for every contract brought in. The defendant admitted that he looked to the land not to the soldiers as his security and that he supposed the soldiers would sell the land to pay their debt to him. The

land was timber land. There was evidence that the soldiers were not intending to make their residence upon it; that the agent employed to get their contracts knew that they were not intending to; that the defendant treated the intent as matter of indifference, and in his conversations with the agent indicated an expectation to get the land for himself or his nominees without the need of a preliminary contract to sell to him. He did get four of the nine parcels. Without going into details it is evident from the way in which the whole business was transacted that all hands proceeded on the notion that if the entrymen put in a periodical appearance on the land they would get it, and that no one troubled himself about actual intent provided the affidavits were in due form. It is impossible to say that the evidence did not warrant finding the defendant guilty of fraud.

Some questions are raised as to the admissibility of evidence. The first concerns the introduction by the Government of similar arrangements with soldiers' widows to file claims on land in the Siletz Indian Reservation without settlement. If the Court in its discretion did not regard the evidence as too remote or as raising too lengthy or complex collateral issues, it properly might admit the facts as bearing on knowledge and intent, even if afterwards the defendant gave an explanation that the jury might deem satisfactory. So as to similar transactions with other soldiers. So as to the defendant's conduct with regard to contracts upon similar claims, although the evidence upon this point can have had but little weight on either side. The other question is upon the admission of certain testimony as to value. The land as we have said was timber land. There seems to have been no sales in the township where it lay, and timber experts knowing by experience and report current rates in adjoining townships were allowed to state them. Without

going into the specific questions asked it is enough to say that we have examined them and find them all to have been well within the discretion of the Court. See *Virginia* v. *West Virginia*, 238 U. S. 202, 212. As the value found by the jury was very near to that set by the defendant, if not the same, we hardly see why the objection should have been pressed.

The only occasion for difficulty or doubt is an instruction by the Court to the jury that if they found for the plaintiff the measure of damages was the market value "with legal interest at six per cent." from the date of the final certificates to that of the trial. The Circuit Court of Appeals disposed of this by saying that the attention of the Court was not called to the question of interest. The bill of exceptions states that the defendant excepted to that part of the instruction, while on the other hand the transcript of the proceedings in Court so far as intelligible would indicate that the Circuit Court of Appeals was right. The usual rule in tort cases has been to leave the question of interest to the jury. *Lincoln* v. *Claflin*, 7 Wall. 132, 139. *Eddy* v. *Lafayette*, 163 U. S. 456, 467. But when the wrong consists of depriving the owner of property having a definite or ascertainable value there would seem to be the same reason for allowing interest as if there had been a misappropriation of money. The discretion of the jury does not mean the right to gratify a whim or a personal fancy. An indication of opinion on the part of the judge certainly would have been allowable, *Graham* v. *United States*, 231 U. S. 474, 480, and the tendency of late cases in this country is to sustain the ruling. *Shaw* v. *Gilbert*, 111 Wisc. 165, 196. *Fell* v. *Union Pacific Ry. Co.*, 32 Utah, 101. *New York, Chicago & St. Louis Ry. Co.* v. *Roper*, 176 Ind. 497, 509. *Wilson* v. *Troy*, 135 N. Y. 96, 104. *Drumm-Flato Commission Co.* v. *Edmisson*, 208 U. S. 534, 539. See *Mobile & Montgomery Ry. Co.* v. *Jurey*, 111 U. S. 584, 596. *New York, Lake*

Erie & Western R. R. Co. v. *Estill*, 147 U. S. 591, 619, 622. St. 3 & 4 Wm. IV, c. 42, § 29. In the circumstances of this case we are of opinion that the judgment must stand.

Judgment affirmed.

MR. JUSTICE PITNEY was absent and took no part in the decision.